Nov. Term 78 Sub. NH Swayne

7 Otto 642

Oct. 7, 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~310.~~ 52,

J. E. STACEY, PLAINTIFF IN ERROR,

vs.

G. W. EMERY, SUPERVISOR OF INTERNAL REVENUE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED NOVEMBER 13, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 310.

J. E. STACEY, PLAINTIFF IN ERROR,

vs.

G. W. EMERY, SUPERVISOR OF INTERNAL REVENUE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	2	1
Petition	4	2
Certiorari	6	3
Summons	7	3
Declaration	8	4
Defendant's plea	11	6
Judgment	12	7
Demurrers	13	9
Entries on the minutes	14	10
Clerk's certificate	14	10

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the middle district of Tennessee, greeting:

Because in the records & proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between J. E. Stacey and G. W. Emory, a manifest error hath happened to the great damage of the said Stacey, as by his complaint appears: we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of United States, together with this writ, so that you may have the same at Washington on the 2d Monday in October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court, the 25th day of May, 1875.

[SEAL.] E. R. CAMPBELL,
Clerk of the Circuit Court for the Middle District of Tennessee.

(Indorsed:) J. E. Stacey v. G. W. Emery. Writ of error. Iss'd May 25, 1875. E. R. Campbell, clerk.

2 UNITED STATES OF AMERICA, *ss:*

To George W. Emory, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 2d Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Middle Tennessee, wherein J. E. Stacey is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 25th day of May, in the year of our Lord one thousand eight hundred & seventy-five.

CONNALLY F. TRIGG,
U. S. District Judge.

3 I, W'm Spence, U. S. marshall for the middle district of Tennessee, make oath that I served this process upon the defendant, G. W. Emory, by delivering to A. M. Hughes, one of his counsel in the cause of J. E. Stacey vs. G. W. Emory, a true copy of this citation on this the 29th of June, 1875.

W. SPENCE,
U. S. Marshal Middle Dist. of Tenn.

Subscribed and sworn to before me this June 28, 1875.

E. R. CAMPBELL,
Clerk U. S. Cir. Court.

4 UNITED STATES OF AMERICA,
Middle District of Tennessee:

At a circuit court of the United States began and held at the Federal court-room, in the city of Nashville, on the third Monday, b'ing the 19 day of April, in the year of our Lord eighteen hundred and seventy-five, and of the Independence of the United States the ninety-ninth year—present, the honorable H. H. Emmons, U. S. circuit judge, presiding—the following proceedings were had, to wit:

On the 6th day of March, 1874, a petition for a writ of certiorari was filed, which is in the words and figures following:

Petition of G. W. Emery for a writ of certiorari.

J. E. STACEY }
vs.
G. W. EMERY. }

To the honorable judges of the circuit court of the United States for the middle district of Tennessee:

Your petitioner, G. W. Emery, represents to your honors that on the 12th day of February, 1874, J. E. Stacey brought suit against petitioner in the circuit court of Davidson County, State of Tennessee, seeking thereby to recover from petitioner the sum of ten thousand dollars damages. Summons was duly issued and served on petitioner, and the cause is now pending in said circuit court of Davidson County, Tennessee.

Your petitioner further states that for a long time he was an internal-revenue officer, to wit, supervisor of internal revenue, and acting as such officer by and under the internal-revenue laws of the United States; that he did said acts, if at all, for which said J. E. Stacey seeks to recover the sum aforesaid, under the color of his said office, and under and by authority *authority* of an act of Congress of the United
5 States, entitled "An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes," passed June 30th, 1864, and the additions and amendments thereto.

The premises considered, your petitioner prays your honors to issue a writ of certiorari to said circuit court of Davidson County, Tennessee, restraining any further proceedings in said circuit court, and requiring said court to send to the circuit court *court* of the United States for the middle district of Tennessee the records and proceedings, and for all other and further relief that your petitioner may be entitled to.

A. M. HUGHES,
U. S. Dist. Att'y Middle District of Tennessee.

And now comes G. W. Emery, petitioner, and on oath states that the facts stated in the foregoing petition are true.

GEO. W. EMERY.

Sworn to & subscribed before me this 16th day of February, 1874.

H. L. CLAIBORNE,
U. S. Commissioner.

I, A. M. Hughes, U. S. district attorney, hereby certify that, as counsel for the petitioner, I have examined the proceedings against him, and

carefully inquired into all the matters set forth in the petition, and believe the same to be true.

ARCHELAUS M. HUGHES,
U. S. Att'y Mid. Dist. Tenn.

On the 6th day of March, 1874, a certiorari issued in the words following:

6 The President of the United States of America to the judges of the circuit court of Davidson County, in the State of Tennessee, greeting:

Whereas a petition duly verified by oath having been filed in the circuit court of the United States for said district by G. W. Emery, supervisor of internal revenue, &c., setting forth that J. E. Stacey commenced suit against him in said circuit court of Davidson County to recover from this said petitioner the sum of ten thousand dollars damages, and said petition further recites that said damage, if any damage at all, was for acts done by said petitioner while acting in said capacity of supervisor of internal revenue, and under color of his said office aforesaid, and praying that a writ of certiorari issue to remove the said cause from the said circuit court of Davidson County to the said circuit court of the United States:

Now, therefore, in consideration of the premises, you are hereby to send into said circuit court of the United States the records and proceedings in said cause, and to stay further proceedings in said cause in your said circuit court of Davidson County, to the end that the said cause may be tried and disposed of according to law in said United States circuit court.

Witness the honorable Nathan Clifford, eldest associate justice of the Supreme Court of the United States, an' the seal of said court, at Nashville, this the 6th day of March, A. D. 1874, and of the Independence of the United States the 98th year.

E. R. CAMPBELL, *Clerk.*

Marshal's return.

Came to hand March 9th, 1874, & executed on Judge N. Baxter, judge of the circuit court of Davidson County, same day, by making known to him the contents of this writ.

ED. S. WHEAT, *D. M.*

7 On the 13th day of May, 1874, the transcript of the cause was filed in this court by the clerk of said State court, which record is as follows, to wit:

STATE OF TENNESSEE:

Pleas at the court-house in the city of Nashville, county of Davidson, and State of Tennessee, on the third Monday, beingthe 18th day of May, in the year of our Lord one thousand eight hundred and seventy-four, and in the 98th year of our Independence.

Present, the Hon. N. Baxter, judge of our circuit court, and assigned to hold the circuit court of the eighth judicial district of Tennessee.

State of Tennessee to the shiriff of Davidson County, greeting:

You are hereby commanded to summon George W. Emery, if to be found in yo'r county, to be and appear before the judge of the eighth

circuit, at the next circuit court to be held in the county of Davidson, at the court-house in the city of Nashville, on the third Monday in May next, then and there to answer the complaint of J. E. Stacey in an action to his damage ten thousand dollars.

Herein fail not, and have you then and there this writ.

Witness Albert Akers, clerk of said court, at office, this fourth Monday in January, A. D. 1874, and in the 98th year of our Independence.

ALBERT AKERS, *Clerk.*

I, J. E. Stacey, do solemnly swear that, owing to my poverty, I am unable to bear the expenses of the lawsuit I am about to bring in the circuit court of Davidson County, Tennessee, and that I am justly entitled to the redress sought, to the best of my knowledge.

J. E. STACEY.

Sworn to & subscribed before me 12th Febr'y, 1874.

ALBERT AKERS, *Clerk.*

8 Issued 12th Febr'y, 1874. Came to hand the same day issued, and executed by reading and making know' the contents of this writ to G. W. Emery this 16th day of Febr'y, 1874.

H. H. WILKERSON, *D. Sh'ff.*

STATES OF TENNESSEE:

I, Albert Akers, clerk of the circuit court for Davidson County, and State aforesaid, certify that the foregoing is a correct *correct* transcript of the record had in this cause, J. E. Stacey, plaintiff, and G. W. Emery, defendant, as the same remains of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office in Nashville, on this the 18th *by* day of May, 1874, and in the 98th year of our American Independence.

ALBERT AKERS, *Clerk,*
By JNO. CARTER, *D. C.*

On the 14th day of May, 1874, the plaintiff, J. E. Stacey, filed in this court his declaration, which is in the words following:

Circuit court of the United States for the middle district of Tennessee

J. E. Stacey, plaintiff in this suit, complains of G. W. Emery, defendent in this suit, for that whereas the said defendent, on the day of , 1870, with force and arms, at the city of Nashville, in the county of Davidson, in the said middle district of Tennessee, the goods and chattels of the said plaintiff, of the value of ten thousand dollars, then and there found, did take and carry away, and other injuries to the said plaintiff then and there did, to the great damage of the said plaintiff.

2nd. And also for that the said defendent afterwards, to wit, on the same day and year last aforesaid, at the city and county and
9 dist. aforesaid, with force and arms, other goods and chattels of the said same plaintiff, to wit, one hundred and one barrels of whiskey of the value of ten thousand dollars, at the place aforesaid found, did take and carry away, and other wrongs & injuries to the said plaintiff.

3rd count. And also for that the said defendent afterwards, to wit, on the same day and year, and at the place aforesaid, the goods and chattels of the said plaintiff, to wit, one hundred and one barrels of whiskey,

of the value of ten thousand dollars, then and there being and found, took, carried away, damaged, and spoiled, and converted, and disposed thereof to his own use, and other wrongs to the said plaintiff then and there did, to the great damage of the said plaintiff.

4th count. And also the said defendant on the same day and year aforesaid seized and took a certain lot of whiskey of the said plaintiff of great value, to wit, of the value of ten thousand dollars, which said whiskey the said plaintiff intended and was about to sell for a certain , to be therefor paid to him, the said plaintiff, and then and there carried away the said whiskey, and kept and detained the same from the said plaintiff for a lond space of time, to wit, months, and converted thereof to his own use; and thereby the said plaintiff was hindered, and delayed, and prevented from selling & disposing of said whiskey, as aforesaid, and thereby lost and was deprived of all the profit, benefit, and advantage which might, and otherwise would, have arisen and accrued to him therefrom, to wit, at the place aforesaid, and other wrongs and injuries to the said plaintiff then and there did, to the great damage of the plaintiff.

5th count. And also for that the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, with force and arms, seized and took possession of divers goods & chattels of the said plaintiff, then and there found, and being in the whole of a large value, that is to say, one hundred and one barrels of the value of ten thousand dollars, and staid and continued in possession of the said goods and chattels so by him seized and taken as aforesaid, and the said goods and chattels afterwards took and carried away from and out of the possession of the said plaintiff, whereby and by reason and in consequence of such said seizure, and of other the premises aforesaid, the said plaintiff not only lost and was deprive'd of his said goods and chattels, and of all profits, benefits, and advantages that could have arisen and accrued to him from the use, sale, employment, and disposal thereof, but was also forced and obliged to, and actually did, lay out and expend large sums of money, and to be at further trouble and expence in and about endeavoring to obtain restitution of the property so by the said defendant seized as aforesaid.

6th count. Also, for that the said def'd't unlawfully, wrongfully, and maliciously seized and took possession of divers goods ands chattels of the said plaintiff, at the tim' and place aforesaid then and there found, and being, in the whole, of a large value, that is to say, 101 barrels of whiskey, of the value of $10,000, and staisd and continued in possession of the said goods and chattels so by him seized and taken as aforesaid; and the said goods and chattels afterward, took and carried away from and out of the possession of the said pl't' whereby, and by reason and in consequence of such wrongful and unlawful and malicious seizure, and of other, the premises aforesaid, the said pl't' not only and was deprived of his said goods and chattels, and of all profits, benefits, & advantages that could have arisen and accrued to him from the use, sale, and disposal thereof, but was greatly injured in his credit and reputation with and among all his neighbors and acquaintances, and all others to whom he was in any wise known; that his character as a merchant and trader was seriously injured, and his business broken up, to the great damage of plaintiff.

7th count.—Also, for that whereas the said pl't', before and at the time of the seizure of his goods and chattels, hereinafter next mentioned, had not committed any act or acts in violation of the revenue laws of the U. S., nor was in any wise subject or liable to have his

goods and chattels seized on account of any violation of said laws, but was in great regard, reputation, and credit amongst all persons trading or dealing with him, yet the said defendant, well knowing the premises, but falsely and wickedly & maliciously contriving and intending to injure, aggrieve, and oppress the said plaintiff, and to bring him into great disgrace with and amongst all his friends, neighbors, and acquaintances, & other good and worthy subjects of this realm, and to put him, the said plaintiff, to great expence of his monies, and falsely and maliciously to cause and procure the said plaintiff to be declared and adjudged guilty of a violation of the revenue laws of the U. S., and to impoverish & wholly ruin him, heretofore, to wit, at the time and place aforesaid, under pretence that plaintiff had violated the laws of the U. S., viz, "An act to provide internal revenue to support the government, to pay interest on the public debt, & for other purposes," passed June 30th, 1864, and the acts in addition and amendment thereto, falsely and maliciously, and without any reasonable or probable cause whatever, seized, and caused to be seized, took possession of, and caused to be taken possession of, divers goods and chattels of the said plaintiff, being, in the whole, of a large value, that is to say, one hundred and one barrels of whiskey, of the value of ten thousand dollars, and staid in possession of the said goods and chattels so by him seized & taken as aforesaid, and the said goods and chattels afterwards took and carried away from and out of the possession of the said plaintiff; and the said plaintiff further says, that by means of the said wrongful and malicious seizure aforesaid, by the def'd't, the said plaintiff was greatly injured in his credit and reputation with and amongst all his neighbors and acquaintances, and other persons to whom he was known, and he lost the use, benefit, & advantage of his said goods and chattels so seized and taken from him; and the said plaintiff hath also, by means of the premises, been forced and obliged to lay out and expend, and hath unceasingly laid out and expended, a large sum of money, to wit, 11 the sum of ten thousand dollars, in and about the applying for & obtaining the release and restitution of the said goods and chattels to him; and the said plaintiff hath been, and is, by means of the premises, wholly ruined in his circumstances, and his business entirely broken up and destroyed, and other wrongs & injuries then and there done to the plaintiff, to the damage of the plaintiff $10,000; and therefore he brings this suit.

E. H. EAST,
S. WATSON, J'R,
Att'ys.

On the 23rd of Sept., 1874, the following pleas were filed by the defendant:

U. S. circuit court for the middle dist. of Tenn.

J. E. STACEY
vs.
G. W. EMERY.

And the said defendant, by A. M. Hughes, his att'y, comes and defends the force and injury, when, &c., he says that he is not guilty of the said supposed trespasses laid to his charge in the declaration of the plaintiff, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him; and of this the said def'd't puts himself upon the country, &c.

And further plea in this behalf as to the said supposed trespasses in the said declaration mentioned, saith that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he saith that the said plaintiff' right of action accrued to him more than three years before the commencement of his suit; and this the said def'd't is ready to verify; wherefore he prays judgement, if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

A. M. HUGHES, *Att'y.*

Replication.—Filed Nov. 14th, 1874.

U. S. circuit court for the middle dist. of Tennessee.

J. E. STACEY
vs.
G. W. EMERY.

And the said plaintiff, as to the plea of the said def't first above pleaded, and whereof he hath put himself upon the country, doth the like.

And the said plaintiff, as to the said plea of the said def'd't, by him secured by above pleader, saith that the said plaintiff, by reason of and def'd't in that plea alleged, ought not to *ought not to* be barred from having and maintaining his aforesaid action thereof against the said def'd't, because that he saith that the said several causes of action in the declaration mentioned, and each and every one of them, did accrue to the said plaintiff within three years before the commencement of this suit, in manner and form as the said plaintiff hath above complained against the said def'd't; but of this he puts himself upon the country, &c.

EAST & WATSON, *Att'ys.*

12 On the 27th of April, 1875, the 3rd plea was filed.

Circuit court of the U. S. for the middle dist. of Tennessee, Ap'l term, 1875.

And the said def't, by att'y, comes and defends the wrong and injury, when, &c., and for further plea in this behalf, the said defendant, by leave of the court for this purpose first had and obtained, according to the statute in such case made and provided, says that the said plaintiff ought not further to have or maintain his aforesaid action against him, the said def'd'nt, because he says that at and before the time when the said supposed trespasses in the plaintiff' said declaration mentioned were committed, he, the said def'd't, was a revenue officer of the U. S., to wit, a supervisor of internal revenue, assigned to duty and acting as such in the dist. aforesaid, under the authorities and powers given to him under the statutes of the United States in such cases made and provided, and that the said several trespasses in the said declaration mentioned, whereof and for which the plaintiff hath brought his action in this behalf against def'd't, were done, if at all committed by him or under his direction, in the execution of his said office, under the said authorities & powers; and this the said def'd't is ready to verify; wherefore he prays judgement of the said plaintiff ought further to have or maintain his aforesaid action thereof against him.

A. M. HUGHES,
Att'y for Def'd't.

On the 27th of Ap'l, 1875, the 4th plea was filed.

Circuit court of the U. S. for the middl' dist. of Tennessee, April term, 1875.

And the said def'd't, for further plea, by leave of the court first had and obtained, says that the said 101 barrels of whiskey mentioned in the said declaration of the said def'd't were seized and taken away, as the said plaintiff in declaring hath alleged, and that afterwards they were libelled in the dist. court of the U. S. for the middle dist. of Tennessee, at the suit of the U. S. for forfeiture and for a condemnation thereof, for a violation of internal revenue laws of the U. S., to wit, on the day of , 1870, and afterwards, to wit, on the 23rd day of October, 1873, such proceedings had were had in the said cause of the U. S. against said 101 barrels of whiskey, in the said district court, that the same were, by the judgment and determination of said court, released to the plaintiff, who was the claimant thereof, and the information against the 101 barrels of whiskey dismissed, and said 101 barrels of whiskey were forthwith returned to the plaintiff thereof, and in which said proceedings and cause it appeared to said court that there was reasonable cause of the seizure of the 101 barrels of whiskey, and a certificate of reasonable cause of seizure of said 101 barrels of whiskey was awarded to the collector of the 5th internal revenue dist. of the State of Tennessee, who made the seizure of the said 101 barrels of whiskey, and which judgment and order of the court in the words and figures following, to wit:

U. S. district court, at Nashville, Thursday morning, October 23, 1873.

THE UNITED STATES
vs.
101 BARRELS OF WHISKEY.

Came the parties, by their attorneys, and came also a jury of good and lawful men, to wit, W'm Anderson, J. B. Clements, T. G. Moss, M. R. Moore, Thom'son Flemming, N. W. Jones, John A. Campbell, F. A. Burk, R. J. King, James Davis, W. S. Hewley, and J. G. McCutchen, who, being elected, tried, and sworn well and truly to try the issues joined, after hearing the evidence, argument of counsel, and charge of the court, upon their oaths do say that they find the issues in favor of the claimant. It is thereupon considered by the court that the information in this cause be dismissed, and that the delivery bond given by the claimant for the property seized in this cause be discharged. It is further ordered by the court that the cost be certified to the proper accounting officer for payment, and that a certificate of probable cause of seizure be issued to D. W. Peobody, collector, it appearing that the seizure, altho' improperly made, was made by his superior officer, the supervisor.

And this the said defendant is ready to verify; wherefore, he prays judgment of the said plaintiff ought further to have or maintain his aforesaid action thereof against him.

A. M. HUGHES,
Att'y for Def't.

13 On the 28th April, 1875, the following demurrer was filed:

The plaintiff comes and demurs to the def'd't 1st plea, as above pleaded, and says the same is insufficient in law inthis, viz, the declaration charges him with having falsely and maliciously seized or caused to be seized the plaintiff's goods, to wit, 101 barrels of whiskey, and def'd't alleges that he was an officer, & justifies under the law, without denying the falsity and malice imputed and charged in the declaration upon defendant, and the plaintiff prays the judgment of the court wherein.

WATSON & EAST.
Att'ys.

Plaintiff comes and demurs to def'd't's 4th plea, and for cause says:
1st. Plaintiff does not allege in his said plea that he was the collector.
2nd. He does not allege that he was the prosecutor in the libel of the U. S. against said 101 barrels of whiskey.
3rd. Nor does he allege that he comes within any provision of the law by which he would be exempted or protected by the certificate of probable cause filed.
4th. The certificate of probable cause set out in the plea cannot protect against the character of suit alledged in the 6tt & 7 counts of plaintiff's declaration.
And plaintiff prays the judgment of the court, &c.

WATSON & EAST,
Att'ys.

Entries on the minutes.

On the 2rd day of December, 1874, the following entry is made:

J. EDWARD STACEY }
vs.
GEORGE W. EMERY. }

By consent of parties, this cause is continued until the next term.

On the 26th day of April, 1874, the following entry is made:

J. E. STACEY }
vs.
G. W. EMERY. }

Came the parties, by their attorneys, and the defendant, by his attorney, moved the court to strike from the files the replication of the plaintiff to the plea of the defendant, which motion was by the court overruled, with leave to the defendant to file an additional plea; and thereupon the defendant moved the court for a rule on the plaintiff to give security for the prosicution of this suit, which motion was continued over by the court.

On the 27th day of April, 1875, the following entry was made upon the minutes of said court:

J. E. SACEY }
vs
. W. EMERY. }

Came the parties, by their attorneys, and the defendant having

14 by leave of the court filed pleas of justification, being the 3rd and 4th pleas filed herein, it is ordered that the plaintiff demur or reply to said pleas during the present day, and that the demurrer, if filed, to either of said pleas be heard at 9 o'clock to-morrow morning; if the demurrer be not filed, that default be entered.

On the 29th day of April, 1875, the following entry is made on the minutes:

J. E. STACEY
vs.
G. W. EMERY.

Came the parties, by their attorneys, and this cause being heard upon demurrer, it is ordered by the court that the 4th plea be amend*ing* by inserting in the fore part thereof that the taking was by the defendant as supervisor of internal revenue, by vertue of the statute in such case made and provided.

And thereupon, the cause being fu'ther *agrured* by counsel for plaintiff and defendant, the demirrer to the 4th plea was by the court sustained, and the demurrer to the 4th plea as amended was by the court overruled. And thereupon, on motion of the defendant, final judgment is upon the whole record given against the plaintiff, with costs; and to which action of the court the plaintiff, by his attorney, then and there excepted.

On the 19th day of May, 1875, an order was entered, which is in the words following, to wit:

J. E. STACEY
vs.
G. W. EMERY.

In this cause the court allows to A. M. Hughes, U. S. district attorney, a fee of two hundred and fifty dollars for his services in defending this cause, and this order should have been entered on the minutes of April 29, 1875; is now entered nunc*e* pro tunc*e*.

UNITED STATES OF AMERICA,
Middle District of Tennessee:

I, E. R. Campbell, clerk of the circuit court of the United States in and for the district aforesaid, do hereby certify that the foregoing is a true, perfect, and correct transcript of the record in the cause lately in said court determined, wherein J. Edward Stacey was plaintiff and George W. Emery was defendant, as the same remaines of record in my office.

Witness my hand and the seal of said court at Nashville, in said district, this the 10th day of October, 1875, and of the Independ*a*nce of the United States the 100th year.

[SEAL.] E. R. CAMPBELL,
Clerk U. S. Circuit Court.

(Indorsement on cover:) No. 310. J. E. Stacey, plaintiff in error, vs. G. W. Emery, supervisor of internal revenue. M. Tennessee C. C. U. S. Filed 13th November, 1875.

SUPREME COURT

OF THE

UNITED STATES.

J. E. STACEY, Plaintiff in Error,

vs.

G. W. EMORY, Supervisor, etc.

In Error to the United States Circuit Court for the Middle District of Tennessee.

ARGUMENT FOR PLAINTIFF IN ERROR.

R. McP. SMITH, Attorney and Counsellor.

Legal Reporter Print, 50 North Cherry street.

SUPREME COURT OF THE UNITED STATES.

J. E. STACEY, Plaintiff in Error,

vs.

G. W. EMORY, Supervisor, etc.

In Error to the United States Circuit Court for the Middle District of Tennessee.

Argument for Plaintiff in Error.

R. McP. SMITH, Attorney and Counsellor.

STATEMENT OF THE CASE.

This is an action of trespass, begun in the State Court, and removed by the defendant to the United Stated Circuit Court. The pleadings were all made in the latter Court.

The declaration, in the first five counts, charges the defendant with having unlawfully seized and carried away one hundred and one barrels of whiskey, the property of the plaintiff. The sixth and seventh counts allege that the said seizure was made unlawfully, maliciously, and for the purpose of oppressing and ruining the plaintiff. (Page 4 of printed record.)

The defendant at first filed two pleas, one not guilty, the other, the Statute of Limitations. (Page 6.) Upon both these pleas the plaintiff took issue by proper replication. (Page 7.) Afterwards, the defendant filed two additional pleas, being the third and fourth.

(Page 7.) These two pleas were filed on the 27th of April, 1875, and on the same day it was ordered by the Court (page 9) "that the plaintiff demur or reply to said pleas during the present day, and that the demurrer (if filed) to either of said pleas be heard at 9 o'clock to-morrow morning. If the demurrer be not filed, that default be entered."

In obedience to this peremptory order, the plaintiff filed two demurrers to said pleas. (The record shows that one of the demurrers was filed to the first plea. (Page 9, second line from top.) This is clearly an error, as a replication had already been filed to the first plea. The language of the demurrer points to the third plea.) The second demurrer was to the fourth plea. Upon argument of the demurrers it was "ordered that the fourth plea be amended by inserting in the forepart thereof that the taking was by the defendant, as Supervisor of Internal Revenue, by virtue of the Statute in such cases made and provided." And therefore the Court sustained the demurrer to the fourth plea, and overruled the demurrer to the fourth plea as amended. Final judgment was then given against the plaintiff upon the whole record. (Page 10.)

The third plea alleges that the defendant was a Supervisor of Internal Revenue, and that the trespasses mentioned in the declaration were done, if at all committed by him, or under his direction, in the execution of his said office. The demurrer denies that this plea offers any justification for the wrongful acts charged in the declaration.

The fourth plea, and the demurrer thereto, raise the questions for decision in this case. They are, therefore, here set out in full, as follows:

Fourth plea, as amended:

"And the said defendant, for further plea, by leave of the Court, first had and obtained, says that the said one hundred and one barrels of whiskey, mentioned in the said declaration of the said plaintiff, were seized and taken away, as the said plaintiff in declaring hath alleged (amendment), by him as Supervisor of Internal Revenue, by virtue of the Statute in such case made and provided, and that afterwards they were libelled in the District Court of the United States for the Middle District of Tennessee, at the suit of the United States, for forfeiture, and for a condemnation thereof, for a violation of internal revenue laws of the

United States, to-wit, on the —— day of ———, 1870, and afterwards, to-wit, on the 23rd day of October, 1873, such proceedings were had in the said cause of the United States against said one hundred and one barrels of whiskey, in the said District Court; that the same were, by the judgment and determination of said Court, released to the plaintiff, who was the claimant thereof, and the information against the one hundred and one barrels of whiskey dismissed, and said one hundred and one barrels of whiskey were forthwith returned to the plaintiff thereof, and in which said proceedings and cause it appeared to said Court that there was reasonable cause of the seizure of the one hundred and one barrels of whiskey, and a certificate of reasonable cause of seizure of said one hundred and one barrels of whiskey was awarded to the Collector of the Fifth Internal Revenue District of the State of Tennessee, who made the seizure of the said one hundred and one barrels of whiskey, and which judgment and order of the Court are in the words and figures following, to-wit:

United States District Court at Nashville,
Thursday Morning, October 23, 1873.

THE UNITED STATES
vs.
ONE HUNDRED AND ONE BARRELS OF WHISKEY.

Came the parties, by their attorneys, and came also a jury of good and lawful men, to-wit, (here follow names of jurors) who, being elected, tried and sworn well and truly to try the issues joined, after hearing the evidence, argument of counsel, and charge of the Court, upon their oaths do say that they find the issues in favor of the claimant. It is thereupon considered by the Court that the information in this cause be dismissed, and that the delivery bond given by the claimant for the property seized in this cause be discharged. It is further ordered by the Court, that the costs be certified to the proper accounting officer for payment, and that a certificate of probable cause of seizure be issued to D. W. Peabody, collector, it appearing that the seizure, although improperly made, was made by his superior officer, the Supervisor. And this the defendant is ready to verify, etc.

Demurrer to the fourth plea.

1. Defendant does not allege in his said plea that he was the collector.

2. He does not allege that he was the prosecutor in the libel of the United States against said one hundred and one barrels of whiskey.

3. Nor does he allege that he comes within any provision of the law by which he would be exempted or protected by the certificate of probable cause filed.

4. The certificate of probable cause set out in the plea cannot protect against the character of suit alleged in the sixth and seventh counts of plaintiff's declaration.

ASSIGNMENT OF ERRORS.

The omission of the Court to act upon the demurrer to the third plea shows that the parties and the Court regarded the fourth plea as presenting the real questions in the case. The third plea and the demurrer thereto were tacitly abandoned.

If, however, the action of the Court in giving final judgment against the plaintiff on the whole record can be regarded as in any manner affirming the validity of the third plea as a defence to this action, the following errors are assigned:

1. Final judgment should not have been rendered on the whole record without sustaining or overruling the demurrer to the third plea, or without entering default on said plea for want of replication.

2. The third plea is not sufficient to sustain a judgment in favor of the defendant, because the allegation of seizure of property by the defendant *as an officer*, without alleging a condemnation or an acquittal with a certificate of probable cause, is no defence to plaintiff's suit.

As to the fourth plea.

The judgment of the Court in overruling the demurrer to this plea was erroneous, because.

3. The judgment of the District Court, relied on in said plea, shows that it did not appear to that Court that there was any probable cause for the seizure.

4. The certificate of probable cause issued to the collector cannot protect the defendant.

5. The certificate of probable cause cannot protect the defendant against an action for a seizure made wrongfully, maliciously and for the purpose of oppression, as stated in the sixth and seventh counts of the declaration.

BRIEF.

1 and 2. These points of error are assigned more out of abundant caution to meet any possibility of an affirmance on grounds not going to the merits of the case, than to secure a reversal on these points.

That the third plea offers no valid defence to plaintiff's action, the Court is cited to *Gelston* v. *Hoyt*, 3 Wheat, 246.

3. The judgment of the District Court relied on in the fourth plea shows that it did not appear to that Court that there was any probable cause of seizure.

The seizure by the defendant, and the subsequent acquittal of the property, fixed his act as a trespass; to exempt him from an action therefor he must show a certificate of probable cause obtained in the manner prescribed by the Statute of March 2, 1799, Sec. 89. (1 Stat. at Large, 696.) *Gelston* v. *Hoyt*, 3 Wheat, 246; *The Apollon*, 9 Wheat, 362.

Probable cause has been defined to be a doubt as to the construction of a statute—*United States* v. *Riddle*, 5 Cranch, 511; circumstances which warrant suspicion—*Locke* v. *United States*, 7 Cranch, 339. Such being the easy conditions for obtaining a certificate, the defendant should show that this judgment was, without doubt, intended to apply to him.

The judgment affirms that the seizure was "improperly made." An improper seizure imports something more than a wrongful taking; this was already determined by the acquittal of the property. An improper seizure means one made without probable cause.

Costs were given in favor of the claimant, whereas the statute provides that on entry of probable cause, costs are to be paid by the claimant. See *Jennings* v. *Carson*, 4 Cranch, 2.

4. The collector's certificate cannot protect defendant. The judgment alleges that the certificate was issued to the collector because he acted simply as a ministerial officer, and in obedience to defendant's orders. This necessarily implies that the orders were issued without propable cause, otherwise the Court would have made an entry of probable cause in the usual form, as prescribed by the Statute, and this would have protected both officers.

5. The certificate of probable cause cannot protect against an action for a malicious trespass. And on this point:

1. Does a certificate of probable cause necessarily imply an absence of malice?

2. Was it the intention of Congress to make such a certificate an absolute protection against an action for a malicious trespass?

1. A certificate of probable cause does not imply an absence of malice. Both may exist together, or there may be one without the other.

2. As to the intention of Congress.

And in this connection:

A. Is there any principle of law applicable to this case, which may serve as a guide to the legislative intent?

B. Does public policy demand that a certificate of probable cause shall exclude all judicial inquiry into defendant's motives?

A. No analogy between this case and malicious prosecution.

Malice may afford a distinctive cause of action if it has caused the least increase or aggravation of the injury. *Dinsman* v. *Wilkes*, 12 How., 390.

The seventh count of the declaration clearly alleges an aggravation of the trespass through malice.

B. As to the principles laid down by the Court in applying considerations of public policy to the construction of Statutes, see the cases of *Crowell* v. *McFaddon*, 8 Cranch, 94; *Otis* v. *Watkins*, 9 Cranch, 339; *Otis* v. *Walter*, 6 Wheat, 583.

May it please Your Honors:

The declaration in this case charges the defendant with having unlawfully and maliciously seized 101 barrels of whisky, the property of the plaintiff.

The defendant in his fourth plea admits the seizure, as charged in the declaration, and claims exemption from suit on the ground that he made the seizure as a Supervisor of Internal Revenue, and that upon the acquittal of the property seized in the U. S. District Court, a certificate of probable cause was awarded to one D. W. Peabody, a Collector of Internal Revenue for the Fifth District of Tennessee.

The pleadings, therefore, present the case of a seizure of property by an officer, without process of law, for forfeiture to the Government, and a distinct refusal of the Government to accept the seizure.

These facts determine conclusively, that the seizure was wrong-

fully made, and the defendant a trespasser. This was held, in *Gelston* v. *Hoyt*, 3 Wheat. 246, and in *The Apollon*, 9 Wheat. 362. In the last case the Court says: "Some obscurity arose at the argument, from not distinguishing between the effect of probable cause in cases of capture *jure belli*, and the effect in cases of municipal seizure. In respect to the former, no principle is better settled in the law of prize, than the rule that probable cause will not merely excuse, but even in some cases justify a capture. If there be probable cause, the captors are entitled, as of right, to an exemption from damages; and if the case be of strong and vehement suspicion, or require further proof to entitle the claimant to restitution, the law of prize proceeds yet further, and gives the captors their costs and expenses in proceeding to adjudication. But the case is far different in respect to municipal seizures. Probable cause has never been supposed to excuse any seizure, except where some statute creates and defines the exemption from damages. The party who seizes, seizes at his peril; if condemnation follows, he is justified; if an acquittal, then he must refund in damages for the marine tort, unless he can shelter himself behind the protection of some statute." The Court then refers to the statute under which the defendant in this case seeks to shelter himself. This is the Act of 2d March, 1799, sec. 89, (1 Stat. at Large, 696,) which provides as follows: "When any prosecution shall be commenced on account of the seizure of any ship, goods, wares or merchandise, and judgment shall be given for the claimant, if it shall appear to the Court before whom such prosecution shall be tried, that there was a reasonable cause of seizure, the said Court shall cause a proper certificate or entry to be made thereof. And in such case, the claimant shall not be entitled to costs, nor shall the person who made the seizure, or the prosecutor be liable to action, suit or judgment, on account of such seizure or prosecution, etc." The Court then says: "It is apparent, from the very language of that clause, that unless the certificate be obtained in the manner prescribed by the law, the seizing officer is liable to a suit for damages."

The defendant in this case, therefore, stands before the Court as a trespasser, seeking exemption from the consequences of his wrongful act, under shelter of the statute. If he attempts to justify his trespass upon a certificate of probable cause, he must

clearly show in his plea a certificate "obtained in the manner prescribed by the law."

The certificate prescribed by the law is simply the expression of the opinion of the Court trying the prosecution, that there was a reasonable cause for the seizure. In determining what is reasonable or probable cause, this Court has given a most liberal construction to these terms in favor of the officer. Circumstances which warrant suspicion, *Lock* v. *United States*, 7 Cranch, 339, a doubt as to the true construction of the law.

United States v. *Riddle* 5 Cranch, 511, are sufficient to justify the Court in certifying probable cause. See also *Averill* v. *Smith*, 17 Wall, 92.

Such being the very easy conditions necessary for obtaining a certificate of probable cause, it is surely not too much to demand that the defendant show, beyond doubt, that the judgment of the Court relied on here, unequivocally applies to his case.

That judgment, after dismissing the information and discharging the delivery bond, proceeds: "It is further ordered that the costs be certified to the proper accounting officer for payment, and that a certificate of probable cause of seizure be issued to D. W. Peabody, Collector, it appearing that the seizure, although improperly made, was made by his superior officer, the Supervisor.

This judgment does not certify that there was probable cause for the seizure.

If the District Court had intended to affirm that the seizure was made upon probable cause, a simple entry to that effect, in the usual form in such cases, would have sufficed to protect all persons engaged in making the seizure. The careful avoidance by the Court of a direct averment that there was probable cause for the seizure, together with the express bestowal of a certificate upon a particular officer by name, raises a strong presumption of intention to exclude all others from the statutory protection.

But not only does the judgment fail to certify probable cause of seizure, on the contrary, it explicitly declares that there was no probable cause therefor.

The only expression of opinion as to the fact of the seizure is, that it was "*improperly made.*" Now, either these words imply an entire want of probable cause, or else they are utterly

meaningless. For they must be taken to import something more than that the seizing officer had committed a trespass; this was clearly determined by the judgment of acquittal. The seizure might have been technically wrongful, and at the same time eminently proper, provided it had been made upon probable cause. In such a case it would have been the duty of the defendant to take the property, and, as stated in *the Apollon*, he would be not only excused, but even justified. How, then, could such a seizure be "improper?" Wrongful it might turn out to have been, but "improper" it certainly could not be, unless there be an impropriety in the performance of official duty. An improper seizure is, necessarily, one which should not, under any circumstances, have been made. It is certain, however, that a certificate of probable cause was awarded to the collector.

This cannot protect the defendant, whatever may have been the collector's complicity in the seizure, it is clear that the District Court was of opinion that the sole responsibility therefor rested upon the defendant. Upon this ground alone, was the certificate awarded the collector.

The judgment recites: "That a certificate of probable cause of seizure be issued to D. W. Peabody, collector, it appearing that the seizure, although improperly made, was made by his superior officer, the Supervisor." The reason here given for protecting the collector, is that his acts, whatever they may have been, were simply those of a ministerial officer, and performed in obedience to his superior's orders. This, in itself, would not exempt him from suit; but it would strongly commend him to the Court for protection. The collector's certificate, therefore, was not intended to imply that the seizure itself was made upon probable cause, but, on the contrary, the sole necessity for awarding him the certificate must have been that there was no probable cause. The selection of the collector as alone worthy of protection upon the ground that obedience to his superior's orders, was the sole motive of his action, was necessarily based on the supposition that the orders were given without probable cause. For if the Court had been of opinion that the defendant had any probable cause to command his inferior officer to act, it would simply have certified probable cause of seizure as directed by the statute, and this would have protected both officers. But the Court having ascertained that the seizure was the act of the defendant, and that it had been "improperly made," was anxious to ex-

empt the collector from any action for his participation in a trespass for which the defendant alone was responsible. It therefore assigns as a reason for granting him such exemption, that he simply did his duty in carrying out the commands of his superior officer. If, now, the defendant can justify his wrongful act upon the collector's innocence, it must be upon the ground that the latter faithfully executed his orders. That is, the defendant can justify his wrongful orders upon his subordinate's obedience thereto. In other words, the defendant's trespass justifies itself.

Again, suppose the responsibility for the trespass could be legally divided between the defendant and the collector in proportion to the extent of their participation in the seizure. It is clear that, in such a case, the collector would be liable only for his own positive acts, while the defendant would be liable for his own positive acts, and also for the collector's acts, done by his command. But there would be one thing preliminary to the seizure, for which the defendant alone would be responsible, and that is the determination of the question as to the propriety of making the seizure. The investigation of this question would pertain alone to the defendant, and the collector would have no share in, or responsibility for, the final decicision thereof. Now, it is this preliminary act, and this alone, to which the District Court looks in determining the question of probable cause. If, then, that Court chooses to apply the statutory protection to the collector, how can his non-liability afford any, the slightest evidence, that an act with which he had absolutely no connection, was blameless? In other words, how can the collector's certificate of probable cause shield the defendant?

Again, the statute provides that, when a certificate of probable cause is made, "the claimant shall not be entitled to costs." In this case, however, the claimant was allowed his costs, the judgment being that "the costs be certified to the proper accounting officer for payment." The allowance of costs to the claimant, and the exemption of the seizing officer from suit, are both given in the statute as the results of an entry of probable cause. In a doubtful case, therefore, the one may well be taken as evidence as to the existence or non-existence of the other. This was done in *Jennings* v. *Carson*, 4 Cranch, 2. In that case a prize had been libelled and acquitted in the Court of Appeals—a Court established by Congress for the trial of certain cases—and afterwards suit was brought in the Circuit Court to carry the decree into effect, and for damages. The Court

denied the claim for damages, because the decree of the Court of Appeals implied that there had been probable cause for the capture. The Court say: "Indeed, the decree of the Court of Appeals is, in this respect, in favor of the captors, since it does not award damages for the capture and detention, *nor give costs in the suit below.*"

Upon the whole then, we insist that the judgment of the District Court relied on in the fourth plea, shows conclusively, that it did *not* appear to that Court that there was any reasonable cause for the seizure of plaintiff's property by defendant.

SECOND.—A certificate of probable cause cannot protect against an action for a seizure made maliciously, and for the purpose of oppression.

And on this point:

1st. Does a certificate of probable cause necessarily imply that the seizure was made without malice?

2d. Was it the intention of Congress to make the certificate of probable cause an absolute protection against an action for a seizure made maliciously, and for the purpose of oppression?

1st. That a certificate of probable cause does not necessarily imply the non-existence of malice, seems too plain for argument. Probable cause and malice may exist together, or there may be one without the other. This is seen in cases of malicious prosecution. Moreover, in a case tried upon information and with a jury, a certificate of probable cause can furnish no evidence as to the absence of malice. In such case the issue presented is forfeiture or no forfeiture. The Court having no power to proceed to the ascertainment of damages upon an acquittal, the inquiry of course is limited to the actual issues presented to the jury. Any examination into the motives or intentions of the seizing officer would be utterly irrelevant and unnecessary. A certificate of probable cause, therefore, in such cases, would not imply an absence of malice.

2d. As to the intention of Congress:

It is certain that the Statute makes a certificate of probable cause a protection to the seizing officer against any suit on account of such seizure. It is also certain that the Statute does not expressly give to the certificate such efficacy as against an action for a malicious seizure. In ascertaining the meaning of the Statute, it may be well to inquire:

A. Whether there is any principle of law applicable to this case which may serve as a guide to the legislative intent.

B. Whether public policy demands that a certificate of probable cause shall exclude all judicial inquiry into the motives of the defendant.

A. The words "malice" and "probable cause" naturally suggest the action of malicious prosecution. In that action probable cause is an absolute protection, however wanton and malicious may have been the prosecution. But there is no analogy between malicious prosecution and this case. Malicious prosecution lies where a legal prosecution has been carried on without probable cause. The act by which the person prosecuted has been injured is a judicial proceeding and in itself a lawful act. The *unlawful* act is the instigation of such judicial proceedings without sufficient evidence of guilt. Probable cause, therefore, is an essential element in determining the legal character of the prosecutor's act. In the present case, however, the question of probable cause has nothing to do with the legality of defendant's act. The seizure and acquittal fix the legal character of the act as a trespass. The entry of probable cause is simply a statutory pardon for the offence.

The seizure is as much a tort, in contemplation of law, after such entry as before.

There is this further important distinction between these two actions, as to the facts necessary to make out probable cause. In malicious prosecution probable cause is defined to be "a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief, that the person accused is guilty of the offence with which he is charged." Mr. Justice Washington in *Munns* v. *Dupont*, 3 Wash. Circ. C. 31. This strict requirement as to the facts to be proved together with the permission to the jury to presume malice from the want of probable cause tends to prevent the abuse of criminal prosecutions. But in the present case no such strictness is required. As shown above, a doubt as to the construction of a Statute, or a suspicion of the violation of law will justify a certificate of probable cause. Can there be found anywhere in the common law such a principle as this, that a person may commit a malicious and wanton trespass, and then justify on the ground that he suspected a violation of law, or was doubtful as to the construction of some statute? And yet such a principle must be now asserted, if a certificate of probable cause can protect against an action for a malicious seizure.

The principle of law applicable to this case is laid down in *Dinsman* v. *Wilkes*. This was an action of tresspass by a marine in an exploring expedition against its commanding officer. Upon the first trial there was judgment for the plaintiff, and a writ of error from this Court by the defendant. The judgment was reversed (7 How., 89). Upon a second trial there was judgment for the defendant and the plaintiff came to this Court by writ of error. 12 *How.* 390. In the last case the Court, Taney, C. J., say: "The case has no analogy to a suit for a malicious prosecution. That action will lie only in cases where a legal prosecution has been carried on without a probable cause. . . . . The action has been extended to civil as well as criminal cases where legal process has been maliciously used against another without probable cause. But the action for a malicious prosecution is the only one in which the party is not liable, although he acts from malicious motives, and has inflicted unmerited injury upon another. The rule is not of a character to recommend it to favor; nor to induce a court of justice to extend it beyond the limits to which it has hitherto been confined. And this is not an action for a malicious prosecution; but for an assault and false imprisonment. And whether the acts charged were done or not, and what motives actuated the defendant, are questions of fact exclusively for the jury; and probable cause or not is of no further importance than as evidence to be weighed by them in connection with all the other evidence in the case, in determining whether the defendant acted from a sense of duty, or from ill-will to the plaintiff." And again on page 404: "The case, therefore, turns upon the motive which induced Captain Wilkes to inflict the punishment complained of. And this question is one exclusively for the jury, to be decided by them upon the whole testimony. And the rule of law by which they must be governed in making up their verdict, is contained in a single proposition. It is this:

If they believe, from the whole testimony, that the defendant, in all the acts complained of, was actuated alone by an upright intention to maintain the discipline of his command and the interest of the service in which he was engaged, then the plaintiff is not entitled to recover. But, if they find that the punishment of the plaintiff was in any manner, or in any degree, increased or aggravated by malice, or a vindictive feeling toward him on the part of

Captain Wilkes, or by a disposition to oppress him, then the plaintiff is entitled to recover."

The principle of this case is simply this, that malice may afford a distinctive cause of action, if it has caused the least increase or aggravation of an injury resulting from acts which the officer had full power to commit. If now the certificate of probable cause is held to relate back to the original offence—the seizure—and to make that act, otherwise wrongful, a rightful exercise of power, should not its saving grace be confined exactly to the fact of seizure, and not peremptorily shut out all inquiry into the motives of the defendant, and the aggravated injury arising therefrom? For that there were circumstances of aggravation, is set out in the declaration. The seventh count charges that the defendant "falsely, wickedly and maliciously contriving and intending to injure, aggrieve and oppress the plaintiff . . . . . and without any reasonable or probable cause whatever seized, etc." The meaning of this allegation is that the malicious motive was not simply an evil affection of the heart, but that it found expression in evil acts, whereby the plaintiff's injury was increased beyond that naturally resulting from the taking of his property; and under this allegation the plaintiff would be entitled to prove any circumstances of aggravation or oppression on the defendant's part.

Was the seizure made in the usual manner, or was it made ostentatiously, so as to bring it to public notice? Were there any words or acts of the defendant in connection with the seizure calculated to make an impression that the plaintiff's suspected violation of law proceeded from something more than negligence or mistake?

These and similar questions would be pertinent to the issue presented in the declaration. If all inquiry into the defendant's motives in a case like this is to be excluded, it must be for reasons other than those ordinarily furnished by the law for determining the responsibility of public officers.

Construing the Statute of 1799 in harmony with the principles of law applicable to such cases, it follows that its purpose was to protect the officers of the Government by a certificate of probable cause, when they have committed a wrongful act in the honest discharge of their duty, and not to shield them from the consequences of their malicious misdeeds.

B. Do considerations of public policy demand such a construction of the Statute as will make a certificate of probable cause an absolute protection against an action for malicious trespass? The prin-

ciple upon which this Court acts in applying considerations of public policy to the interpretation of statutes is well seen in the cases arising under the Embargo Act. These were actions against collectors for taking and detaining vessels. The 11th section of the Act of 25th April, 1808, authorized collectors "to detain any vessel ostensibly bound with a cargo to some other port of the United States, whenever, in *their opinion*, the intention is to violate or evade any of the provisions of the acts laying an embargo, until the decision of the President of the United States be had thereupon." *Crowell* v. *McFadon*, 8 Cranch, 94. In *Otis* v. *Watkins*, 9 *Cr.*, 339, the Court held, that it was not necessary for the collector to show reasonable cause for the seizure. It is said in that case: "If the jury believed that he honestly entertained the opinion under which he acted, although they might think it incorrect and formed hastily, or without sufficient grounds, he would be entitled to their protection. . . . . This does not preclude proof on the part of the plaintiff showing malice, or other circumstances which may impeach the integrity of the transaction." And in *Otis* v. *Walter*, 6 *Wheat*, 583, it is said: "There is a confidence placed in the discretion of a collector in cases of this kind, which may be abused, but which ought to protect him from loss where there is no reason to believe, as there is not in this case, that the detention proceeded from sinister motives, and not from a conscientious desire of discharging his duty."

These cases show the earnest desire of the Court to protect the officers of the Government in the honest discharge of their duty, but at the same time to hold them to the strictest accountability for acts done maliciously. In so far as the acts of the officer proceed from a conscientious desire to promote the public good, they are the acts of the Government; but so far as his acts arise from wicked motives, they are his own misdeeds, and for their consequences he should be responsible.

It is respectfully insisted for the plaintiff in this case, that he be allowed to have his cause presented to the Court and jury upon the merits, and whatever damage he may have sustained by the unlawful acts of the defendant, may be ascertained and allowed him.

R. McP. SMITH,
Attorney and Counsellor.

NOTAS

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

J. E. STACEY
v.
G. W. EMERY. } No. 52.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR MIDDLE DISTRICT OF TENNESSEE.

DEFENDANT'S BRIEF.

STATEMENT.

The defendant was a supervisor of internal revenue, sued for causing the seizure of 101 barrels of whisky belonging to Mr. Stacey. The whisky was libeled by the collector of internal revenue, under direction of Mr. Emery, but the information was dismissed and the property released to the plaintiff, a certificate of probable cause of seizure by the collector being granted. Damages laid at $10,000. The defendant justified as supervisor of internal revenue, and upon demurrer to his pleas judgment was given in his favor.

BRIEF.

The fourth plea (Record, 8), as amended (Record, 10), shows that the defendant acted officially in making the seizure, and that there was reasonable cause for its being made. (Munns *v.* Dupont, 3 Wash. C. C., 31; and 1 Am. Leadg. Cas., 200, *et seq.*)

That the liquors were not condemned does not make the defendant liable. (Wilkins *v.* Despard, 5 T. R., 112.)

EDWIN B. SMITH,
Assistant Attorney-General.

DISCREPANCY IN PAGINATION

Or

PAGES MISSING

And

CANNOT BE FOUND

defendant, E. Sterling C. Robertson, for a valuable consideration, made, executed, and delivered to W. J. Chamblin, then and thereafter, until the time of his death, a citizen and resident of said county of Mason and State of Illinois, his certain promissory note or writing-obligatory, in substance and effect in the figures and words following, to wit:

$4,190.] BELTON, *October 2d*, 1860.

3 On the first day of July, 1861, I promise to pay to the order of D'r W. J. Chamblin, at the office of Mess'rs Chamberlin & Earle, in the town of Belton, Texas, the sum of four thousand one hundred and ninety dollars, with ten per centum interest from date, with current rate of exchange on N. Y., for value received.

(Signed) E. STERLING C. ROBERTSON.

Whereby the said defendant became indebted and liable and bound to pay to the said W. J. Chamblin, or to his order, the sum of money mentioned in said note, with ten per cent. interest from the date thereof, and the current rate of exchange upon said sum between the said town of Belton, in the State of Texas, and the city of New York, according to the tenor and effect of said note.

That the said W. J. Chamblin departed this life intestate, on or about the 29th day of April, A. D. 1871, in the said county of Mason and State of Illinois, and was, at the time of his death, still the legal holder and owner of the said note.

That 'hereafter, to wit, on the 6th day of May, A. D. 1871, letters of administration were issued out of the county court of the said county of Mason and State of Illinois to Tabitha C. Chamblin and J. M. Winn, as administratrix and administrator of the estate of said W. J. Cham-

4 blin, deceased, in accordance with the laws of said State of Illinois.

That thereafter, to wit, on the 10th day of September, A. D. 1873, the said Tabitha C. Chamblin and J. M. Winn, as administratrix and administrator of the estate of the said W. J. Chamblin, deceased, for a valuable consideration, endorsed, transferred, assigned, and delivered the said note to the plaintiff, the said Henry Cease, by placing upon the back thereof the following endorsement, to wit:

We, the undersigned, administratrix and administrator of the estate of D'r W. J. Chamblin, for value received, hereby assign, transfer, and deliver the within note upon E. Sterling C. Robertson, dated October 2nd, 1860, and the money due thereon, to Henry Cease or order.

This 10th day of September, 1873.

(Signed) T. C. CHAMBLIN,
Administratrix of the Estate of Doctor W. J. Chamblin.

(Signed) J. M. WINN,
Administrator of the Estate of Doctor W. J. Chamblin.

Whereby the said plaintiff became the legal holder and owner of said note, and the said defendant thereby became justly indebted, liable, and bound to pay the plaintiff the sum of money mentioned in said note, with interest thereon at the rate of ten per cent. per annum from the date thereof, and the current rate of exchange upon said

5 sum, and the interest thereon, between the said town of Belton, Texas, and the city of New York, according to the tenor and effect of said note.

That the plaintiff is still the legal holder and owner of said note;

that the same is long since due; that defendant has often been requested to pay the same, yet to pay the same or any part thereof the defendant has failed and refused, and still so fails and refuses, to plaintiff's damage in the sum of fifteen thousand dollars.

Whereupon the plaintiff sues and prays for process pursuant to law, and for judgment for the sum due him, with interest, and for his costs of suit, and for general relief, &c.

COKE, HERRING & ANDERSON &
CHANDLER, CARLETON AND ROBERTSON,
Pl'ff's Attorneys.

Of citation & return.

And afterwards, to wit, on the 30th September, 1873, process in due form issued from the clerk's office, the marshal's return upon which is endorsed, to wit:

Executed on the 2 day of January, 1874, by handing to the within-named defendant, in person, a true copy of this writ and a copy of the petition attached, both certified to by the clerk of the court under the seal of the court.

THO'S F. PURNELL, *U. S. M.*,
By W. T. ANDERSON,
Deputy U. S. M.

And afterwards, to wit, January 24, 1874, the defendant filed his answer in words, to wit:

6 *Plea to the jurisdiction.*

In the honorable circuit court of the United States for the western district of Texas, at Austin.

HENRY CEASE
vs.
E. S. C. ROBERTSON.

Plea to jurisdiction, demurrer, answer, &c.—Filed January 24, 1874. M. Hopkins, cl'k.

And now comes the defendant E. S. C. Robertson, by his attorneys, Hancock, West & North, and F. H. Sleeper, and pleads in abatement of this action, and says:

That the note sued on was assigned and transferred to the plaintiff, Cease, by T. C. Chamblin & J. M. Winn, pretending to be administrator and administratrix of W. J. Chamblin, dec'd, for the sole purpose of enabling a suit to be brought on said note in this honorable court for the use and benefit of the estate of said Chamblin, dec'd; that said Cease paid no consideration, or, if any consideration, a very inadequate consideration, for the transfer of said note to him; and defendant alleges that the sole purpose and object of the transfer of said note was to commit a fraud upon the jurisdiction of this honorable court, and the said Cease is not the true and legal owner of said note, but the same is now the property of the estate of said Chamblin.

Defendant says that the said T. C. Chamblin and the said J. M. Winn well knew that as the administrator of the estate of said Chamb-

lin, deceased, by appointment of a court in the State of Illinois,
7 they could not sue on said note in the courts of the State of Texas, either State or federal; and for the purpose of avoiding taking out letters of administration on the estate of said Chamblin, dec'd, in the State of Texas, and for the purpose of having a suit brought in the federal court in Texas, the said T. C. Chamblin & the said Winn and the plaintiff Henry Cease colluded and conspired together for the purpose of committing a fraud upon the jurisdiction of this honorable court, and enable a suit to be brought in this court for the benefit of said estate.

Defendant says that at the June term, 1873, of this honorable court their was a suit pending in this honorable court, instituted on the 13th day of May, 1873, by the said T. C. Chamblin, representing herself as the widow of said Chamblin, deceased, joined therein by Ida T. Chamblin, William G. Chamblin, & Charles E. Chamblin, represented to be the children of said Chamblin, dec'd, the said children being alleged to be minors, & the said T. C. Chamblin therein suing as the next friend of said children, who were alleged in the petition in said suit to be minors.

Defendant says that at said term an amended petition was filed in said cause, wherein it was alleged that there were no debts of any kind
8 against the estate of said Chamblin, dec'd, and that the estate was entirely solvent.

Defendant says that this honorable court dismissed the said suit at the said June term thereof on the demurrer to plaintiff's pleadings filed. And defendant says that after said suit was dismissed the plaintiff & the said T. C. Chamblin & the said Winn conspired as aforesaid for the purposes as aforesaid; and defendant says that plaintiff well knew of the suit aforesaid *suit*, and well knew that the suit had been dismissed by this honorable court before and at the time the transfer of said note to him as alleged in plaintiff's petition, and well knowing that said suit had been dismissed as aforesaid, plaintiff conspired and colluded as alleged herein, & has instituted this suit for the use and benefit of said estate.

Defendant further avers that said Chamblin, dec'd, in his life-time caused a suit to be instituted in the hon. district court of Bell County on the same identical note sued on in this action. That said suit so commenced by said Chamblin was pending in said court for several years, & this defendant appeared thereto & filed his answer pleading fraud and failure of consideration for which said note was given. That there were several jury trials in said suit in Bell County and the jury failed to agree on a verdict.

9 Defendant says that after the death of said Chamblin the suit in said Bell County abated.

And now this defendant says the plaintiff, Henry Cease, well knew of said suit in Bell County and well knew that this defendant had plead in said suit in Bell County as herein averred, and well knew that this defendant had refused to pay said note because of fraud in the consideration of said note; said plaintiff well knew the facts aforesaid at the time the transfer of said note was made to him.

And defendant avers that plaintiff colluded and conspired with said T. C. Chamblin & said Winn for the purpose of avoiding the necessity of bringing suit in the State court of the county where this defendant resides, & when the note sued on was executed, and to defraud the laws of the State of Texas requiring administration to be commenced in Texas for the collection of assets in Texas, and to defraud the jurisdic-

tion of this court by making a nominal transfer of said note, without consideration or without adequate consideration, to a non-resident of the State of Texas.

And the matters herein alleged this defendant is ready to verify.

E. S. C. ROBERTSON.

HANCOCK, WEST and NORTH,
F. H. SLEEPER,
Att'ys for Def't.

HENRY CEASE
vs.
E. S. C. ROBERTSON.

Personally appeared before the undersigned, clerk of the United States circuit court for the western district of Austin, E. S. C. Robertson, defendant in the above-styled suit, and being duly sworn, says on oath that the matters and things set forth in the above and foregoing plea in abatement are true.

E. STERLING C. ROBERTSON.

Sworn to and subscribed before me this 24th January, 1874.

M. HOPKINS,
Clerk.

Demurrer.

And if the above and foregoing plea to the jurisdiction and in abatement is not sustained, defendant demurs to plaintiff's petition and says the allegations therein made are insufficient in law to require him to make answer thereto, and of this defendant prays the judgment of the court.

HANCOCK, WEST AND NORTH,
F. H. SLEEPER,
Att'ys.

General issue. Non-assumpsit.

And if the demurrer of defendant is overruled, defendant pleads in bar, denies each and all the allegations contained in plaintiff's petition, & says he did not undertake and promise, as is alleged in plaintiff's petition; & of this he puts himself upon the country.

HANCOCK, WEST & NORTH.
F. H. SLEEPER,
Att'ys.

11 *Special plea in bar.*

And pleading specially in this cause, the defendant says that he executed the note sued on for the following considerations, and no other:

Previous to the execution of said note the said W. J. Chamblin, payee in said note, was in possession of and owned a flock of sheep, consisting of about 1,200 head, in the county of Bell, in said State, which he, the said Chamblin, was proposing to sell at five dollars per head.

That this defendant, being desirous of going into the business of sheep-raising & growing wool in said Bell County, entered into negotiations with said Chamblin for purchase of said flock of sheep; that

said Chamblin then represented to this defendant that his stock of sheep which he was proposing to sell to defendant were entirely sound and healthy, and that they were unaffected by disease of any kind; that said Chamblin was and had been for a long time previous to that time a sheep-raiser, and was well acquainted with the habits and diseases of sheep; that, on the other hand, this defendant had before that time no experience in the raising & tending of sheep, and was not acquainted with the diseases to which sheep are subject; that, relying solely upon the representations of said Chamblin, & trusting
12 in his honesty and integrity, this defendant bought said flock of sheep from said Chamblin at five dollars per head, and paid part of the purchase-money in cash, and executed the note sued on in this action for the balance of the purchase-money.

And now this defendant says that at the time said sheep were sold and delivered to him by said Chamblin they were unsound and diseased, and were then suffering from and affected by a disease known as scab, which rendered the said sheep of little or no value; that the said Chamblin well knew that said sheep were so unsound, diseased, & effected at the time he sold said sheep to this defendant; and defendant alleges that said Chamblin had been medicating and doctoring said flock of sheep for said disease, & to prevent its spreading among the flock, for a long time before he sold the same to this defendant; and defendant alleges that when he was negotiating with said Chamblin for the sale of said sheep the said Chamblin instructed his herdsmen, who had been applying remedies to said sheep to cure or suppress the said disease, not to inform this defendant that the sheep were diseased or affected with scab.

Defendant says that said Chamblin designedly, & for the purpose of defrauding him, sold to him the said sheep, knowing that they were diseased as aforesaid, and knowing that said sheep, diseased as
13 they were, were not then worth one dollar per head; and knowing that this defendant was ignorant of the fact that said sheep were diseased, and that defendant was relying on the statements made by him as to their soundness and freedom from disease.

Defendant says that when he became aware of the fact that said flock of sheep were diseased, he gave them all the care and attention which it was possible for him to give; that he caused them to be doctored for said disease; that he kept them in the care of experience' herdsmen, and did all he could to cure said sheep of said disease; that notwithstanding his care and attention to said sheep, doing all that any prudent man could do, they continued to languish and suffer from said disease, and to die in great numbers. The lambs which came from them were weak and sickly, and perished soon after they were dropped, and in a few years after defendant purchased the flock they had dwindled to a very few in number & were worthless.

Defendant says that soon after he purchased said sheep, on account of said disease they began to drop their wool, and at shearing season the yield was trifling and the quality of a very inferior character; and as the disease continued the loss in quantity and quality of wool
14 was greater every year until it was not worth gathering.

Defendant says that in the loss of said sheep by death from said disease, in the loss of wool which he would have received if said sheep had been healthy & sound, and in the cash paid out in medicating, doctoring, & herding said sheep & otherwise giving them special care and attention required by said disease, he has been damaged in the sum

of ten thousand dollars, which defendant now here claims as a valid set-off against said note.

And of this defendant puts himself upon the country.

F. H. SLEEPER,
Att'y for Def't.

Plea of statute of limitations.

And for further answers in this behalf defendant says he did not promise and undertake in manner and form as alleged in plaintiff's petition four years next before the commencement of this suit, and he did not so promise and undertake four years next before the note sued on is alleged to have become due and payable.

Defendant says that the note sued on is alleged to have become due and payable on or before the 1st day of July, 1861, and this defendant says that he has not undertaken or promised to pay the said sum of money at any time within four years next before the commencement of
15 this suit and not including within said four years any time beteen the 1st day of July, 1861, and the 1st day of July, 1865.

Wherefore he says plaintiff is barred by the statute of limitations from inforcing his said suit. And of this he puts himself upon the country.

F. H. SLEEPER,
Att'y for Def't.

HENRY CEASE
vs.
E. S. C. ROBERTSON.

Personally appeared before the undersigned, clerk of the United States circuit court for the western district of Texas, E. S. C. Robertson, defendant in the above-styled suit, & says on oath the matters & things set fourth in the above & foregoing special plea in bar are true.

E. STERLING C. ROBERTSON.

Sworn to and subscribed. Subscribed and sworn to before me this 24th January, 1874.

M. HOPKINS, *Clerk.*

And afterwards the follow' entry appears upon the minutes of the court:

Continuance.

FRIDAY, *January* 30, 1874.

HENRY CEASE
vs.
E. S. C. ROBERTSON. } 1472.

On this day came the parties, by their attorneys, an' on motion it was ordered that this cause be continued as on affidavit of the def't.

16 And afterwards, to wit, June 3d, 1874, the following motions were filed by the plaintiff, endorsed to wit: "Motion to suppress depositions of witnesses Doubleday, Alexander, Chamberlin, & Alexander. Filed June 3d, 1874. M. Hopkins, clerk, to wit."

In U. S. circuit court for western district of Texas.

HENRY CEASE
vs.
E. S. C. ROBERTSON. } 1472.

Now comes the plaintiff in the above-styled cause and moves the court to suppress & not allow the same to be read in evidence on the trial the depositions of the following-named persons now on file in the papers of said cause, to wit:

1st. Plaintiff moves to suppress the answers and depositions of the witness W. R. Alexander because he has not signed the answers to his direct interrogatorys and because he has entirely failed to answer or notice cross-interrogatories 1, 2, 3, 4, & 6.

2. Plaintiff moves to suppress the answers & depositions of the witness D. A. Chamberlin because he has not signed at all the answers to the 8th & 11th direct interrogatories, nor has he signed the answers to cross-interrogatories.

Plaintiff moves to suppress the answer of the witnesses C. S. Doubleday & M. T. Minor, because neither of said witnesses has signed his answers to the said interrogatories.

Plaintiff further asks the court to suppress the answers and depositions of each and all of the above-named witnesses because the
17 certificate of H. H. Parker, the officer before whom the same purports to have been taken, is indefinite, vague, and not in due form of law.

F. W. CHANDLER,
Att'y for Plaintiff.

And on the same day pl'ff filed a further motion, endorsed: "1472. Henry Cease vs. E. S. C. Robertson. Motion to suppress the depositions of the witness D. J. Chamberlin. Filed June 3d, 1875. M. Hopkins, cl'k."

In circuit court of the United States for the western district of Texas.

HENRY CEASE
vs.
E. S. C. ROBERTSON. } 1472.

Comes now the plaintiff in the above-styled & numbered cause and moves the court to suppress, and not allow the same to be read on trial of this cause, the depositions & answers of the witness H. J. Chamberlin, now on file in the papers of said cause, because the certificate of the officer before whom said answers were made does not show who signed and swore to said answers.

F. W. CHANDLER,
Att'y for Plaintiff.

And afterwards the following entry appears upon the minutes of the court.

JANUARY 12, 1875.

HENRY CEASE
vs.
E. S. C. ROBERTSON. } 1472.

On motion of pl'ff's attorney it was ordered that he have leave to amend.

And on the same day plaintiff's amended petition was filed, endorsed, to wit: "No. 1472. Henry Cease vs. E. S. C. Robertson. Plaintiff's amended petition and replication to defendant's answer. Filed January 12, 1875. M. Hopkins, cl'k."

In words, to wit:

Amended petition.

In circuit court of the United States for the western district of Texas.

HENRY CEASE
vs.
E. S. C. ROBERTSON. } No. 1472.

And now comes the plaintiff, leave of the court having been obtained, and files this his amended petition and replication to defendant's answer.

And for amendment alleges that the said T. C. Chamblin and J. M. Winn, in their fiduciary capacity under the laws of the State of Illinois, where the administration of the estate of said W. J. Chamblin was pending, at the date of the transfer and delivery of said note to petitioner, had full power and authority to sell, transfer, and pass the legal title of said note and the money due thereon to petitioner.

And by way of answer and replication to defendant's plea in abatement in this suit, petitioner denies each and every charge of fraud therein contained, and avers that he is the legal owner and holder of the note sued on; that he purchased it for a valuable consideration, which he paid at the date of his purchase; that his said purchase was bona fide without any collusion or fraud with any one, without any contract, agreement, or understanding, either directly or indirectly, that the administrators or the heirs of the said W. J. Chamblin should
19 have, or are to have, any interest in said note or any part of the money due thereon; that he did not purchase the same for the purpose of giving this court jurisdiction of the subject-matter or parties, or for the purpose of ousting any other court of its jurisdiction of the subject-matter or parties in this suit, and says each and every charge of that character in defendant's answer is wholly untrue.

And further replying to that part of defendant's answer that sets up fraud and failure of consideration, petitioner says, if it is true that the note sued on was given in part payment for a flock of sheep, which he in nowise admits, then petitioner alleges that at the date when defendant purchased said sheep that they were all sound and free from scab or any other disease; that said defendant inspected said sheep several times before and at the date of his purchase; and petitioner denies the allegation of defendant that the said W. J. Chamblin for a long time previous to the date of said note had been a sheep-raiser. On the contrary, petitioner alleges the truth to be that the said W. J. Chamblin had only been engaged in the business a short time before defendant's purchase, and the most of that time in the county of Bell, in the State

of Texas, in the neighborhood of the defendant, and that defendant frequently saw said sheep and knew as much about the condition of said sheep as the said W. J. Chamblin.

20 And petitioner denies the charge that the said W. J. Chamblin made any false or fraudulent representations to defendant about said sheep, or that he concealed any fact as to their true condition that was within his, the said Chamblin's, knowledge, or that said sheep had the scab or any other disease at the date of said alleged purchase by defendant, and says if said sheep ever had any such disease as alleged by defendant, that from the gross negligence and inattention of defendant the said sheep contracted the disease after defendant's purchase of them. By reason of all which neither the said W. J. Chamblin or petitioner is responsible for what defendant may have lost, if anything, by reason thereof.

And further replying to defendant's answer, petitioner alleges that the disease called scab, that sheep are sometimes infected with, is a disease that can with reasonable care and attention be easily cured. And that if it is true, as alleged by defendant, that any one or more of said flock of sheep did have the scab at the date of defendant's purchase, which is not admitted, but denied, then petitioner alleges that there was but very few of said sheep so infected, and that in the mildest form, at the date of defendant's purchase. That defendant must have known the fact that if he had taken reasonable care of said sheep and applied the remedies generally used to cure said disease, with reasonable skill and

21 diligence, said sheep could all have been saved and kept in a healthy condition, and would have proved a profitable investment for defendant. That if any or all of said sheep was lost on account of said disease called scab, or any other disease, it was on account of the defendant's wanton and wilful neglect in not taking reasonable care of them and using the proper remedies to save them within reasonable time, and that his loss, if any, is the result of his fault and negligence. By reason of all which petitioner says defendant is not entitled to any benefit from his plea of fraud and failure of consideration.

Wherefore petitioner prays for judgment for his principal debt, interest, and costs.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Plaintiff.

And afterwards plaintiff filed his amended petition, endorsed: "1472. Henry Cease vs. E. S. C. Robertson. Amended petition. Filed March 3d, 1875. M. Hopkins, cl'k."

In words, to wit:

Amended petition.

In circuit court of U. S. court, at Austin.

HENRY CEASE
vs. } No. 1472.
E. S. C. ROBERTSON.

That the said W. J. Chamblin at the date of his death was a resident citizen of the county of Mason, in the State of Illinois; that each and all of his heirs were at the date of his death resident citizens

22 of the State of Illinois, and that they have ever since been resident citizens of said State. That the said T. C. Chamblin and J.

M. Winn, administrators of said estate, were, at the date of the sale, transfer, and delivery of the note sued on by petitioner, resident citizens of the county of Mason, in the State of Illinois, have ever since been and still are resident citizens of said State. That the defendants, E. S. C. Robertson, was, at the date of the institution of this suit, and still is, a resident citizen of Bell County, in the western district of Texas and State of Texas.

Wherefore petitioner prays judgment for his debt, interest, and costs.

F. W. CHANDLER,
Att'y for Plaintiff.

And afterwards, to wit, March 3rd, 1875, the defendants filed motion to strike out & demurrer & answer to pl'ff's petition as amended, endorsed: "Filed March 3rd, 1875. M. Hopkins, cl'k."

And in words, to wit:

Motion to strike out amendment, demurrer, & answer.

In U. S. C. C't, west. dist., Austin, Texas.

H. CEASE
vs.
E. S. C. ROBERTSON. } No. 1472.

And now at this day comes the said defendant, on this 3d day of March, 1875, and moves the court to strike out the amended petition of the said plaintiff, filed this day, because the same is filed too late, and is filed out of the due order of pleading, and after the jury had been empannelled & the evidence introduced in part.

23

F. H. SLEEPER &
HANCOCK, WEST & NORTH,
Def't's Att'ys.

CEASE
vs.
ROBERTSON. } No. 1472.

And with leave of the court first had and obtained comes the said defendant and demurs to the plaintiff's petition as this (3d March, 1875) day amended, and says that the matters & things therein stated are not sufficient in law for the said pl'ff to maintain this suit.

And for more special cause of demurrer he says it appears from the face of the petition that the plaintiff has no cause of action, & it further appears that the court has no jurisdiction of the suit. It further appears from the face of plaintiff's original and amended petition that more than five years have elapsed from the 5th of March, 1870, down to the time of the filing of said suit as amended the 3d March, 1875, & that the note is barred by the statute of limitation of four years.

And all of this he prays judgment, &c.

SLEEPER, HANCOCK & WEST & NORTH,
Def't's Att'ys.

24

And for answer to said original and amended petition this defendant says, excluding from the computation the period *for* 28th January, 1861, to the 30th March, 1870, that more than four years had elapsed from the accrueal of the said plaintiff's cause of action to the

3rd day of March, 1875, when, for the first time, a cause of action was set forth in his pleadings.

Wherefore he says the plaintiff's cause of action is barred by the statute of limitations of four years, and this he is ready to verify, &c.

F. H. SLEEPER &
HANCOCK, WEST & NORTH,
Def'ts Att'ys.

Plaintiff's evidence.

Note.

$4,190.00.] BELTON, *October 2d*, 1860.

On the first day of July, 1861, I promise to pay to the order of D'r W. J. Chamblin, at office of Mess'rs Chamberlin & Earl, in the town of Belton, Texas, the sum of four thousand one hundred ninety dollars, with ten per centum interest from date, & the current rate of exchange on N. Y., for value received.

E. STERLING C. ROBERTSON.

(Endorsed:)

25 We, the undersigned, administratrix and administrator of the estate of D'r W. J. Chamblin, for value received, hereby assign, transfer, and deliver the within note upon E. Sterling C. Robertson, dated October 2d, 1860, and the money due thereon, to Henry Cease, or order, this 10th day of September, 1873.

T. C. CHAMBLIN,
Administratrix of the Estate of Doctor W. J. Chamblin.
J. M. WINN,
Administrator of the Estate of Doctor W. J. Chamblin.

(2d. Endorsed:) Report of proceedings probate court of Mason County on the sixth day of May, 1871, in the matter of the estate of W'm J. Chamblin, dec'd. T. C. Chamblin and J. M. Winn, admin's.

In words to wit:

26 STATE OF ILLINOIS,
Mason County, ss:

Pleas before the honorable John A. Mallory, county judge of the county of Mason, in the State of Illinois, and presiding judge of the county court in and for the said county, at a regular term thereof, begun and held for the despatch of probate business, at the court-house in Havana, in said county, on the third Monday (being the seventeenth day) of April, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the

Present: Hon. John A. Mallory, county judge; John H. Cleaveland, sheriff.

Attest:

ISAAC N. MITCHELL, *Clerk.*

The court was opened by due proclamation, according to law.

Be it remembered that, to wit, on the sixth day of May, A. D. 1873, the same being one of the days of the April term, A. D. 1871, of said court, the following among other proceedings was had and entered of record in said court in words and figuers following, to wit:

The following is the petition, copied, together with the indorsements had thereon:

27 *Petition of Tabitha C. Chamblin and J. M. Winn in the matter of the estate of William J. Chamblin, deceased, for letters of administration.*

To the Hon. John A. Mallory, judge of the county court of Mason County, in the State of Illinois:

The petition of the undersigned, Tabitha C. Chamblin & J. M. Winn, respectfully represents that William J. Chamblin, late of the county of Mason aforesaid, departed this life at Mason City, in said county, on or about the 29th day of April, A. D. 1871, leaving no last will and testament, as far as your petitioners know or believe.

And this petition further shows that the said William J. Chamblin died seized and possessed of real and person' estate, consisting chiefly of lands situate in said county, and personal estate, all of said estate being estimated to be worth about ten thousand dollars.

That the said deceased left surviving him Tabitha C. Chamblin, his widow, and Ida T. Chamblin, W'm J. Chamblin, Cha's E. Chamblin, his children, as heirs.

That your petitioner', T. C. Chamblin, widow, and J. M. Winn, believing that the said estate should be immediately administered, as well for the proper management of said estate as for the prompt col-
28 lection of the assets, by virtue of their right under the statute therefore pray that your honor will grant letters of administration to them, taking the oath prescribed by the statute, and entering into bond in such sum and with such securities as may be approved by your honor.

TOBITHA CHAMBLIN.
J. M. WINN.

STATE OF ILLINOIS,
Mason County, ss:

Tabitha C. Chamblin & J. M. Winn, being duly sworn, depose and say that the facts averred in the above petition are true, according to the best of their knowledge, information, and belief.

TIBATHA C. CHAMBLIN.
J. M. WINN.

Sworn to and subscribed before me, I. N. Mitchell, clerk of the county court of Mason County, this 6th day of May, A. D. 1871.

I. N. MITCHELL, *Clerk.*

(Endorsed, to wit:) Petition for letters of administration. Estate of William J. Chamblin, deceased. Petition of T. C. Chamblin and J. M. Winn. In the county court of Mason County. Filed this 6th day of May, 1871. I. N. Mitchell, clerk. Approved May 6th, 1871. J. A. Mallory, co. judge. Recorded, adm'r record B, fol. 189. I. N. Mitchell, co. clerk.

29 Whereupon the following order of the court was had:

For order on petition for letters of administration.

IN THE MATTER OF THE ESTATE OF W. J. Chamblin, dec'd.

And now, on this day, appears Tabitha C. Chamblin and J. M. Winn,

and ask that letters of administration be granted them on the estate of William J. Chamblin, deceased; and it appearing to the court, by satisfactory evidence, that the said William J. Chamblin, late of the county of Mason and State of Illinois, died at Mason City on or about the 29th day of April, A. D. 1871, leaving no last will and testament; and it is further shown that said W. J. Chamblin died seized and possessed of real and personal estate in said Mason County estimated to be worth about ten thousand dollars; and that the said deceased left surviving him Tabitha C. Chamblin, his widow, and Ida T. Chamblin, W'm J. Chamblin, and Cha's E. Chamblin, his children; that said petitioner, being widow of said deceased, does believe it necessary to administer on said estate, it is therefore ordered that said petition, being approved, be received and recorded.

The following order was had pertaining to the appointment of said Tabitha C. Chamblin and J. M. Winn:

30 For order on appointment of administrators.

IN THE MATTER OF THE ESTATE OF W. J. Chamblin, dec'd.

And now, on this day, this cause coming on, it is ordered that letters of administration be issued to Tibitha C. Chamblin and J. M. Winn, upon their filing satisfactory and approved bond.

In pursuance of the above order the following proceedings were had at the next term of this court:

STATE OF ILLINOIS,
Mason County, ss:

Pleas before the honorable John A. Mallory, county judge of the county of Mason, in the State of Illinois, and presiding judge of the county court in and for the said county, at a regular term thereof, begun and held for the dispatch of probate business, at the court-house in Havana, in said county, on the third Monday (being the fifteenth day) of May, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the .

Present, Hon. John A. Mallory, county judge.

JOHN H. CLEAVELAND, *Sheriff.*

Attest:

ISAAC N. MITCHELL, *Clerk.*

The court was opened by due proclamation according to law.

31 Be it remembered that on Monday, to wit, on the 15th day of May, A. D. 1871, the same being one of the days of the May term, A. D. 1871, of said court, the following among other proceedings was had and entered of record in said court, in the words and figuers following, to wit:

The following is a copy of the bond in said cause presented:

Know all men by these presents that we, Tibitha C. Chamblin, J. M. Winn, Abraham Cheny, Henry Cease, and Ed. Craig, of the county of Mason and State of Illinois, are held and firmly bound unto the people of Illinois in the penal sum of twenty-thousand dollars, current money of the United States, which payment, well and tuly to be made, and performed, we, and each of us, bind ourselves, our heirs, executors, administrators, and assigns, jointly, severally, and firmly by these presents. Witness our hands and seals this 10th of May, A. D. 1871.

The condition of the above obligation is such, that, if the said Tibitha C. Chamblin and J. M. Winn, administratrix and administrator of all and singular the goods and chattels, rights and credits of William J. Chamblin, deceased, do make or cause to be made a true and perfect inventory of all and singular the goods and chattles, rights and credits of the said deceased which shall come to the hands, possession,
32 or knowledge of them, the said Tabitha C. Chamblin & J. M. Winn, as such administrators, or to the hands of any person or persons for them, and the same, so made, do exhibit or cause to be exhibited in the county court for the said county of Mason, agreeably to law, and such goods and chattels, rights and credits do well and truly administer according to law, and all the rest of the said goods and chattels, rights and credits, which shall be found remaining upon the accounts of the said administrators, the same being first examined and allowed by the county court, shall deliver and pay unto such person or persons respectively as may be legally entitled thereto; and, further, do make a just and true account of all their actings and doings therein, when thereunto required by the said court. And if it shall hereafter appear that any last will and testament was made by the deceased, and the same be proved in court, and letters testamentary or of administration be obtained thereon, and the said Tabitha C. Chamblin and J. M. Winn do in such case, on being required thereto, render and deliver up the letters of administration granted to them as aforesaid, and shall in general do and perform all other acts which may at any time be required of them by law, then this obligation to be void; otherwise to remain in full force and virtue.

33

TABITHA CHAMBLIN. [SEAL.]
J. M. WINN. [SEAL.]
ABRAHAM CHENEY. [SEAL.]
HENRY CEASE. [SEAL.]
ED. CRAIG. [SEAL.]

[Stamp, $5.50, cancelled.]

Taken, signed, and sealed before me this 10th of May, A. D. 1871.
J. S. SHEICK, *C. J.*

(Endorsed, to wit): Bond of T. C. Chamblin and J. M. Winn, adm'rs of W'm J. Chamblin, dec'd. Filed this 13th day of May, A. D. 1871. I. N. Mitchell, clerk. Approved May 15th, A. D. 1871. J. A. Mallory, county judge. Recorded Adm'r Record B, fol. 189. J. N. Mitchell, co. cl'k.

Whereupon the following order was had:

For order on bond.

IN THE MATTER OF THE ESTATE OF }
W. J. Chamblin, dec'd. }

And now on this day come Tabitha C. Chamblin and J. M. Winn, and present their bond in the penal sum of twenty thousand as administratrix and administrator of the estate of W'm J. Chamblin, deceased, with Abraham Cheney, Henry Cease, and Edward Craig as securities.

And the court having examined said bond, and being sufficiently advised concerning said bond and securities, it is received, approved, and ordered filed and recorded.

Whereupon the said T. C. Chamblin and J. M. Winn file
34 their oaths as administratrix and administrator of the estate of W. J. Chamblin, dec'd, as follows:

Estate of William J. Chamblin, deceased.—Administrator's oath.

STATE OF ILLINOIS,
Mason County, ss:

In county court, April term, A. D. 1871.

I do solemnly swear that I will well and truly administer all and singular the goods and chattles, rights, credits, and effects of William J. Chamblin, deceased, and pay all just claims and charges against his estate, so far as his goods, chattles, and effects shall extend and the law charge; and that I will do and perform all other acts required of me by law, to the best of my knowledge and abilities.

TABITHA C. CHAMBLIN.

Sworn to and subscribed before me this 6th day of May, A. D. 1871, in county court.

I. N. MITCHELL,
Clerk of the Court.

Estate of William J. Chamblin, deceased.—Administrator's oath.

STATE OF ILLINOIS,
Mason County, ss:

In county court, April term, A. D. 1871.

I do solemnly swear that I will well and truly administer all and singular the goods and chattles, rights, credits, and effects of
35 William J. Chamblin, deceased, and pay all just claims and charges against his estate, so far as his goods, chattels, and effects shall extend and the law charge; and that I will do and perform all other acts required of me by law, to the best of my knowledge and abilities.

J. M. WINN.

Sworn to and subscribed before me this 6th day of May, A. D. 1871, in county court.

I. N. MITCHELL,
Clerk of the Court.

Whereupon letters of administration were issued to Tabitha C. Chamblin and J. M. Winn, which said letters are in words and figures as follows:

Letters of administration.

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to all to whom these presents shall come, greeting:

Know ye, that whereas William J. Chamblin, of the county of Mason and State of Illinois, died intestate, as it is said, on or about the

29th day of April, A. D. 1871, having at the time of his disease personal property in this State, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same:

To the end, therefore, that the said property may be collected
36 and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint Tabitha C. Chamblin and J. M. Winn, of the county of Mason and the State of Illinois, administratrix and administrator of all and singular the goods and chattels, rights and credits, which were of the said William J. Chamblin at the time of his disease, with full power and authority to secure and collect the said property and debts, wheresoever the same may be found in this State, and in general to do and perform all other acts which are now or hereafter may be required of them by law.

Witness Isaac N. Mitchell, clerk of the county court in and for the said county of Mason, at his office in Havana, this sixth day of May, A. D. 1871, and the probate seal of said court hereunto affixed.

[SEAL.] ISAAC N. MITCHELL,
Clerk of the County Court.

[Stamp.]

(Endorsed, to wit:) Letters of administration. Mason county court. Estate of Wm. J. Chamblin, deceased. Tabitha C. Chamblin and J. M. Winn. Administrators' Book B, page 189. Filed this 6th day of May, 1871, and recorded in book.

I. N. MITCHELL, *Clerk.*

37 STATE OF TEXAS,
County of Mason, ss:

I, Isaac N. Mitchell, clerk of the county court in and for said Mason County, in the State of Illinois aforesaid, the same being a court of record and having a seal, and said court having original and exclusive jurisdiction of all matters probate and testamentary and of administration, do hereby certify that the above and foregoing is a true and correct copy of the petition of Tabitha C. Chamblin and J. M. Winn for letters of administration on the estate of William J. Chamblin, deceased, and also the order of the court approving and ordering the same to be recorded, the order of the court appointing the said T. C. Chamblin and J. M. Winn administratrix and administrator of the said estate and of granting letters of administration to them, the bond of said T. C. Chamblin and J. M. Winn as such administratrix and administrator, the order of the court approving said bond and ordering same filed and recorded, the oath of the said T. C. Chamblin and J. M. Winn taken as such administratrix and administrator, and the letters of administration issued to them on said estate, as the same appears of record in my office.

38 And I further certify that the said T. C. Chamblin and J. M. Winn have been since their appointment at the April term, A. D. 1871, of said court administratrix and administrator of the estate of William J. Chamblin, deceased, and that their appointment as administratrix and administrator, and that their letters of administration issued to them, remain in full force and effect, and they are still acting as such, and that full faith and credit is to be given to all their acts and doings as such administratrix and administrator of the estate of said William J. Chamblin, dec'ed, from their said appointment to the thirteenth day of September, A. D. 1873.

In testimony whereof I, Isaac N. Mitchell, clerk of said county court

of Mason County, have hereunto set my hand and affixed the seal of said court this 13th day of September, A. D. 1873.

[L. S.] ISAAC N. MITCHELL,
Clerk County Court.

STATE OF ILLINOIS,
County of Mason:

I, John A. Mallory, sole presiding judge of the county court of Mason County, and State of Illinois, the same being a court of record, having a clerk and seal, do hereby certify that Isaac N. Mitchell, whose
39 name appears attached to the foregoing certificate, is the clerk of said court and has the custody of the seal of said court, and that his signature to the above and foregoing certificate is genuine and in his own handwriting and under the seal of said court, and that said certificate and attestation is by the proper officer and in due form.

In testimony whereof I, John A. Mallory, sole presiding judge of the county court of Mason County, in the State of Illinois, have hereunto set my hand this 13th day of September, A. D. 1873.

J. A. MALLORY,
Co. Judge.

STATE OF ILLINOIS,
County of Mason, ss:

I, Isaac N. Mitchell, clerk of the county court in and for the county of Mason, State of Illinois, do hereby certify that J. A. Mallory, whose name appears subscribed to the foregoing certificate, is the sole presiding judge of the county court of Mason County, and State of Illinois, duly commissioned and qualified, and that his signature to the above and foregoing certificate is genuine and in his own handwriting.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, in Havana, this 13th day of September, A. D. 1873.

[L. S.] ISAAC N. MITCHELL,
Clerk County Court.

40 3d. Plaintiff read the depositions of Mess'rs T. C. Chamblin, H. Cease, and J. M. Winn, endorsed on envelope: "1472. Henry Cease vs. E. S. C. Robertson. Answers and depositions of T. C. Chamblin, J. M. Winn, and Henry Cease. Rec'd from p. office at Austin & filed January 18, 1874. M. Hopkins, cl'k, clerk of the circuit court of the United States for the western district of Texas, at Austin. Opened under order of court January 19, 1874. M. Hopkins, cl'k."

Commission is in words to wit:

41 UNITED STATES OF AMERICA:

Circuit court of the United States, western district of Texas, holding sessions at Austin.

The President of the United States to any officer authorized by the laws of Texas and the practice of the district courts of the State to take depositions of witnesses, greeting:

Know ye that, reposing trust in your integrity and fidelity, we have, and by these presents do, nominate, constitute, appoint, commission, and require you to cause M'r's T. C. Chamblin, J. M. Winn, and Henry Cease, citizens of the county of Mason, in the State of Illinois, material witnesses for the defendant, to come before you at such time and place

as you may appoint, and that you then and there carefully and fully examine them, upon oath or affirmation first taken before you, touching the annexed interrogations & cross-int'g's:

1. That you reduce their answers so taken to writing, in proper form, and cause the same to be subscribed and sworn to before you by said witnesses.

2. That you certify under your hand and seal of office that said answers were sworn to and subscribed before you.

3. That you seal up in an envelope the answers so taken, together with the annexed interrogatories and this commission, with your name written across the seal thereof.

4. That you endorse on said envelope the names of the parties to said suit, as well as the names of said witnesses.

5. Address the package to the "clerk of the circuit court of the United States for the western district of Texas, at Austin."

6. That if said package be transmitted by the public mail, the postmaster shall endorse thereon that he received it from your hands, and sign his name thereto; which answers, when so taken and returned as aforesaid, are to be read in evidence in a certain suit now pending in said circuit court of the United States, at Austin, wherein Henry Cease is plaintiff and E. S. C. Robertson defendant. No. 1472.

Herein fail not, but due return make of this commission, with your proceedings had by virtue thereof, to our said circuit court at Austin before the return day of the next term, to be begun and held at Austin on the first Monday in January next, A. D. 1874.

Witness the Hon. Nathan Clifford, associate justice of the Supreme Court of the United States, and the seal of our said circuit court, at Austin, this 17 day of December, 1873.

[L. S.] M. HOPKINS, *Clk.*

42 In hon. U. S. circuit court, west. dist. of Texas, at Austin, January term, 1873.

HENRY CEASE
vs.
E. S. C. ROBERTSON.

The plaintiff, or his attorney of record, Mess'rs Coke, Herring and Anderson, & Chandler, Carleton & Robertson, will please take notice that five days after a copy of this notice and of the accompanying interrogatories application will be made to the clerk of the United States circuit court for the western district of Texas, at Austin, for a commission to take the answers to the following interrogatories to M'r's T. C. Chamblin, J. M. Winn, & Henry Cease, citizens of the county of Mason, in the State of Illinois, material witnesses for the plea in abatement filed in this cause, the said answers to be read in evidence on the trial of said plea:

Int. 1st. (To all the witnesses.) Are you acquainted with the parties to this suit? Were you acquainted with W. J. Chamblin during his lifetime? Are either of you related to W. J. Chamblin? If so, what is the relationship? Is said Chamblin dead or alive? If dead, when and where did he die?

Int'y 2nd. (To all of said witnesses.) Do you know the consid-
43 eration of the note which is sued on in this action? If so, state the consideration; state also when you became informed of the consideration of the note, and who gave you the information.

Inter. 3rd. (To M'r's T. C. Chamblin and the witness Winn.) Did you or either of you cause a suit to be instituted in the honorable circuit court of the United States for the western district of Texas, returnable to the last June term of said court at Austin, in the name of T. C. Chamblin and others, as the widow and children of W. J. Chamblin, dec'd, for the purpose of collecting said note against the defendant in this suit? If you say you did, who were your attornies, and what was the result of said suit?

Inter. 4th. (To M'r's T. C. Chamblin and the witness Winn.) Did you or not after the last June term of said court, and after said suit was dismissed, transfer the said note to Henry Cease? If you did, what was the object & design of the transfer? Did you make the transfer at your own suggestion, or were you advised by some other person or persons to make the transfer, and who so advised you? and state fully the design, object, & purpose of the transfer. If Cease paid any consideration *of* for the note, state fully what the consideration was.

Inter. 5th. (To M'r's T. C. Chamblin and the witness Winn.)
44 Were or were you not advised and instructed to transfer said note to the plaintiff or some other person, and did you not make the transfer to the plaintiff, Henry Cease, for the purpose of having a suit brought in the federal court for the benefit of the estate of W. J. Chamblin in the collection of said note? If you say you were so advised, were you advised orally or by letter? If orally, please state who advised you. If advised by letter, please attach a copy of such letter to this interrogatory with your genuine signature written on the same for the purpose of identification.

Inter. 6th. (To the witness Henry Cease.) When did you first see the note sued on? State fully the consideration for which the note was transferred to you. Who proposed to transfer the note to you? And state fully the object & purpose of the transfer.

Inter. 7. (To Henry Cease.) Were you or not informed by T. C. Chamblin & J. M. Winn that they desired to transfer the said note to you for the purpose of enabling you to bring suit in the federal court? Did they or not tell you that they had caused a suit to be instituted on said note in the federal court, in the name of the widow &
45 children, last June, and that the suit had been dismissed, and that they desired to have the note transferred to you for the purpose of getting juri'ction & collecting said note in the federal court? Did any person have such a like conversation with you, and was not the transfer made to you for the purpose so suggested?

Inter. 8. (To the witness Henry Cease.) Did you or not know before the note was transferred to you that W. J. Chamblin had sued the defendant on said note in his life-time, and that the defendant plead failure of consideration & fraud in the sale of a flock of sheep for which said note was given; and did you or not know that there had been one or more trials of the suit so begun by said Chamblin, and the juries had failed to agree? And if you say you paid a valuable consideration for said note, explain fully why you did so, knowing that the defendant had refused for years to pay said note on account of said alleged fraud.

Inter. 9th. (To Henry Cease.) Please state the exact consideration of the transfer of said note to you. If you bought it, say how much you paid for it.

F. H. SLEEPER,
Att'y for Def't.

46 In circuit court of the United States for the western district of Texas.

HENRY CEASE
vs.
E. S. C. ROBERTSON. } No. 1472.

Plaintiff, by his attorneys, objects and excepts to each and all of the interrogatories propounded to the witnesses T. C. Chamberlin and J. M. Miner, and the plaintiff Henry Cease, because each and every question in one of said interrogatories are leading, and because the answers to each and every question, if in the affirmative, are irrelevant, illegal, and inadmissible in evidence in this cause; and to each and all the questions in each and every interrogatory propounded to the plaintiff, Henry Cease, because he cannot be compelled to give evidence against himself upon the law side of this court.

And to each and every question contained in the 2nd & 3rd direct interrogatories to said witness, and answers thereto, if in the affirmative, because the same are irrelevant, illegal, and inadmissable in evidence in this cause; and to the questions and answers to the 4th & 5th, 6th, 7th, 8th, & 9th direct interrogatories for the same reasons.

CHANDLER, CARLETON AND ROBERTSON,
Att'ys for Plaintiff.

47 If the above exceptions and objections are overruled, then plaintiff propounds the following cross-interrogatories to said witness:

Cross-int'y 1st. (To all of said witnesses.) Please state all that you know that may benefit the plaintiff or defendant in this suit, as fully as if you had been more specifically interrogated.

Cross-int'y 2nd. (To all of said witnesses.) State whether or not you know W. J. Chamberlin; if yea, is he dead or alive? If you say he is dead, state if you know the State and county the said W. J. Chamberlin was a resident citizen of at the date of his death, and how long had he been a resident citizen of the State and county where he lived at the date of his death.

CHANDLER, CARLETON AND ROBERTSON,
Att'ys for Plaintiff.

United States circuit court, western district of Texas, at Austin holding sessions.

I, Matthew Hopkins, clerk of the circuit court of the United States for the western district of Texas, at Austin, hereby certify that the foregoing and annexed pages contain a full and true copy of the original int'ys and cross-int'ys filed in this court in case No. 1472, entitled Henry Cease vs. E. S. C. Robertson, to the witnesses T. C. Chamblin, J. M. Winn, and Henry Cease, residing in the county of Mason, State of Illinois, material witnesses for the def't.

In testimony whereof I have hereunto set my hand and the impress of the seal of court, at Austin, this 17th Decem'r, 1873.

[L. S.] M. HOPKINS, *Clk.*

48 The depositions of Tabitha C. Chamblin, J. M. Winn, and Henry Cease, of the county of Mason and State of Illinois, witnesses of lawful age, produced, sworn, and examined on their corporal oaths, on the twenty-seventh day of December, A. D. 1873, before the clerk of the circuit court, in the city of Havana, in the county of Mason and State of Illinois, by me, Leonard Schwenk, clerk of the circuit court within and for said Mason County, in pursuance of the commission & notice hereto annexed for the examination of the said witnesses, to be read in evidence in behalf of the defendant on the trial of a certain suit now pending and undetermined in the United States circuit court for the western district of Texas, wherein Henry Cease is plaintiff and E. S. C. Robertson defendant.

The said witnesses, being first by me duly sworn according to law, previous to the commencement of their examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff as of the defendant, in relation to the matters in controversy between the said parties, so far as they should be interrogated thereto, on oath, testified as follows:

49 Mr's T. C. CHAMBLIN, being first duly sworn, testified as follows:

My name is Falitha C. Chamblin; residence, Mason City, Mason County, Illinois.

Int. 1st. Are you acquainted with the parties to this suit? Were you acquainted with W. J. Chamblin during his lifetime? Are either of you related to W. J. Chamblin; if so, what is the relationship? Is said Chamblin dead or alive; if dead, when and where did he die?

Answer 1st. I am acquainted with the parties to this suit; was acquainted with W. J. Chamblin during his lifetime; I was his wife. W. J. Chamblin is dead; he died at Mason City, April 29th, A. D. 1871.

Int. 2. Do you know the consideration of the note which is sued on in this action? If so, state the consideration; state also when you became informed of the consideration of the note, and who gave you the information.

Answer 2d. I know the consideration of the note; the note was given for a flock of sheep, some 1,600 or more. I was living in Texas at the time and heard it talked over several times before the sale was made. D'r Chamblin and M'r Robertson were neighbors; and I heard the bargain made.

Int. 2. Did you, or either of you, cause a suit to be instituted in the honorable circuit court of the United States for the western
50 district of Texas, returnable to the last June term of said court, at Austin, in the name of T. C. Chamblin & others, as the widow and children of W. J. Chamblin, deceased, for the purpose of collecting said note against the defendant in this suit? If you say you did, who were your attorneys, and what was the result of said suit?

Ans. 3. I left the note in the hands of Charles E. Dodge, of Austin, Texas, for collection, but gave him no special direction. I don't know who the attorneys were. I understand the suit was dismissed, and the papers were returned to M'r Dodge.

Int. 4. Did you or not, after the last June term of said court, and after said suit was dismissed, transfer the said note to Henry Cease. If you did, what was the object and design of the transfer? Did you make the transfer at your own suggestion, or were you advised by some other person or persons to make the transfer, and who so advised you? And

state fully the design, object, and purpose of the transfer. If Cease paid any consideration for the note, state fully what the consideration was.

Answer 4. I did transfer the note to Henry Cease after the suit
51 had been dismissed. The object was to pay claims against the estate of W. J. Chamblin. I made the transfer of the note to Henry Cease at my own suggestion. The design and object of the transfer was to pay a claim which was owing from the estate to Henry Cease, and had been allowed, and to get Henry Cease to assume the payment of, and thereby relieve the estate from a large amount of indebtedness. Cease paid for the note his allowed claim, which was about two hundred dollars, and assumed the payment of claims owing from the estate to the amount of some five or six thousand dollars, or more, and relieved the estate from that amount of indebtedness.

Interro'y. 5. Were or were you not advised & instructed to transfer said note to the plaintiff or some other person, and did you or not make the transfer to the plaintiff, Henry Cease, for the purpose of having a suit brought in the federal court for the benefit of the estate of W. J. Chamblin in the collection of said note? If you say you were so advised, were you advised orally or by letter? If orally, please state who advised you. If advised by letter, please attach a copy of such letter to this interrogatory, with your genuine signature written on the
52 same, for the purpose of identification.

Ans. 5. I was not advised or instructed to transfer the note to plaintiff, or any person, for the purpose of having a suit brought in the federal court, and I did not transfer it for any such purpose. The note was sold and assigned to Henry Cease, and the estate has no interest it, and has not had any interest since the transfer.

Cross-interrogatories:

Cross-inter. 1st. Please state all that you know that may benefit the plaintiff or defendant in this suit, as fully as if you had been more specifically interrogated.

Answer 1st. I know that the sale of the note to Henry Cease was a bona fide transaction for value received.

Cross int. 2d. State whether or not you know W. J. Chamblin; if yea, is he dead or alive? If you say he is dead, state, if you know, the State and county the said W. J. Chamblin was a resident citizen of at the date of his death, and how long had he been a resident citizen of the State and county where he lived at the date of his death?

53 Answer 2d. I knew W. J. Chamblin; he is dead. W. J. Chamblin was a resident of Mason County, State of Illinois. At the time of his death he had resided in Mason County, Illinois, for about 9 years before his death.

T. C. CHAMBLIN.

J. M. WINN, being first duly sworn, testified as follows:

My name is J. M. Winn; residence, Mason City, Macon County, Illinois; age, 53 years; occupation, physician.

Int. 1. Are you acquainted with the parties to this suit? Were you acquainted with W. J. Chamblin during his life-time? Are either of you related to W. J. Chamblin? If so, what is the relationship? Is said Chamblin dead or alive; if dead, when and where did he die?

Answer 1st. I am acquainted with Henry Cease, and not acquainted with M'r Robertson. I was acquainted with W'm J. Chamblin during his life-time. I am a cousin of W'm J. Chamblin. Chamblin is dead; he died in Mason City, April 29th, A. D. 1871.

Inter. 2d. Do you know the consideration of the note which is sued on in this action? If so, state the consideration; state also when
54 you became informed of the consideration of the note, and who gave you the information.

Answer 2d. I do not know what the consideration of the note sued on was of my own knowledge.

Inter. 3. Did you or either of you cause a suit to be instituted in the honorable circuit court of the United States for the western district of Texas, returnable to the last June term of said court, at Austin, in the name of T. C. Chamblin and others, as the widow and children of W. J. Chamblin, dec'd, for the purpose of collecting said note, against the defendant in this suit? If you say you did, who were your attorneys, and what was the result of said suit?

Ans. 3d. I did not cause a suit to be instituted in the circuit court of the United States for the western district of Texas at the last June term at Austin, in the name of T. C. Chamblin & others, as the widow and children of W'm J. Chamblin, dec'd, for the purpose of collecting said note against the defendant in this suit. I did not know anything about such suit having been commenced until the papers were returned to M'r Dodge, as he informed me. Don't know who the attorneys were.

55 Int. 4th. Did you or not, after the last June term of said court, and after said suit was dismissed, transfer the said note to Henry Cease? If you did, what was the object and design of the transfer? Did you make the transfer at your own suggestion, or were you advised by some other person or persons to make the transfer, and who so advised you? and state fully the design, object, and purpose of the transfer. If Cease paid any consideration for the note, state fully the consideration was.

Ans. 4th. I, together with M'r's Chamblin, as administrators, sold and transferred the note to Henry Cease on or about the 10th day of September last. The object and design of the transfer was to pay Henry Cease his allowed claim against the estate, which amounted to near two hundred dollars, and also to pay him for certain unsettled claims against the estate of W. J. Chamblin, dec'd, which he assumed, and relieved the estate from that much indebtedness. The transfer was made at the suggestion of M'r's Chamblin. The consideration of the transfer was as above stated.

Int. 5th. Were you or were you not advised & instructed to
56 transfer said note to the plaintiff or some other person; and did you or not make the transfer to the plaintiff, Henry Cease, for the purpose of having a suit brought in the federal court for the benefit of the estate of W. J. Chamblin in the collection of said note? If you say you were so advised, were you advised orally or by letter? If orally, please state who advised you; if advised by letter, please attach a copy of such letter to this interrogatory, with your genuine signature written on the same, for the purpose of identification.

Ans. 5th. I was not advised to transfer the note to the plaintiff or any other person, except M'r's Chamblin, and I talked the matter over. The transfer was not made for the purpose of having a suit commenced in the Federal court. It was a bona fide sale to Cease.

Cross-interrogatories by plaintiff's att'y:

Cross-int. 1st. Please state all that you know that may benefit the plaintiff or defendant in this suit as fully as if you had been more specifically interrogated?

Answer to cross-int. 1st. 1 don't know anything more than that it was a bona fide transaction, and the estate has no further interest in it.

57 Cross-int. 2d. State whether or not you know W. J. Chamblin. If yea, is he dead or alive; if you say he is dead, state, if you know, the State and county the said W. J. Chamblin was a resident citizen of at the date of his death, and how long had he been a resident citizen of the State and county where he lived at the date of his death?

Ans. 2d. I was acquainted with W. J. Chamblin; he is dead; he was a resident citizen of Mason County, State of Illinois, at the time of his death; he had lived in Mason County, Illinois, some 9 or 10 years previous to his death.

J. M. WINN.

HENRY CEASE, being first duly sworn, testifies as follows:

My name is Henry Cease. Residence, Mason City, Mason County, Illinois. Age, 52 years. Occupation, grain dealer and farmer.

Int. 1st. Are you acquainted with the parties to this suit; were you acquainted with W. J. Chamblin during his life-time. Are either of you related to W. J. Chamblin; if so, what is the relationship. I' said Chamblin dead or alive. If dead, when and where did he die?

58 Ans. 1. I am the plaintiff in the suit. I do not know the defendant. I was acquainted with W. J. Chamblin during his life-time. I am not related to W. J. Chamblin. M'r Chamblin is dead. He died at Mason City, Mason County, Illinois, on or about the 29th day of April, A. D. 1871.

Inter. 2d. Do you know the consideration of the note which is sued on in this action; if so, state the consideration. State also when you became informed of the consideration of the note and who gave you the information?

Answer 2d. I do not know what the consideration of the note was for?

Inter. 3d. (To Henry Cease.) Where did you first see the note sued on. State fully the consideration for which the note was transferred to you. Who proposed to transfer the note to you, and state fully the object and purpose of the transfer?

Answer 3d. The first time I recollect of seeing the note was at the time I purchased it. I may have seen the note a week or so before I purchased it. The estate of W'm J. Chamblin was indebted to me on a claim which was already allowed, and I was wanting my money. I think the claim was near two hundred dollars, and there was also un-

59 settled claims against the estate that I was security for, which amounted to five thousand dollars, or more, and the note was assigned to me in payment for my allowed claim against the estate, and for my paying these other claims where the amount is determined. M'r's Chamblin was the person who proposed to transfer the note to me when I first asked her for the payment of my allowed claim against the estate. The object of the transfer of the note was to get my money and make myself secure, and I receipted the estate for my claim, and assumed the payment of the other claims.

Inter. 4. Were you or not informed by T. C. Chamblin and J. M. Winn that they desired to *to* transfer the said note to you for the purpose of enabling you to bring suit in the Federal court; did they or not tell you that they had caused a suit to be instituted on said note in the Federal court, in the name of the widow and children, last June, and that the suit had been dismissed, and that they desired to have the note transferred to you for the purpose of getting jurisdiction and collecting said

note in the Federal court; did any person have such or like conversation with you, and was not the transfer made to you for the pur-
60 pose so suggested.

Answer 4. I was not informed by either of the parties that they desired to transfer the note to me for the purpose of enabling me to bring suit in the Federal court. They did not tell me that they had caused a suit to be instituted on said note in the Federal court in the name of the widow and children and that the suit had been dismissed, nor did I know anything about the note having ever been sued on. No person ever had any such or like conversatien with me, and the note was not transferred to me for any such purpose, but it was transferred to me for the consideration of my claim against the estate and the unsettled claim which I assumed the payment of, whatever it might be.

Inter. 5. Did you or not know, before the note was transferred to you, that W. J. Chamblin had sued the defendant on said note in his life-time, and that the defendant plead failure of consideration and fraud in the sale of a flock of sheep for which said note was given, and did you or not know that there had been one or more trials of the suit so begun by said Chamblin, and the juries had failed to agree, and if you say you paid a valuable consideration for said note, explain fully why
61 you did so, knowing that the defendant had refused for years to pay said note on account of said alleged fraud.

Answer 5th. I did not know that W. J. Chamblin ever sued the note in his life-time, and did not know that the note had ever been sued in any shape or manner. The reason why I paid a valuable consideration for the note was because I was wanting my money that the estate owed me, and the estate was not paying promptly, and for a large amount which I had assumed, the payment of which the estate was owing, and by my assuming it the estate was released from the payment of the same, and I did not know of any fraud, or that defendant had ever refused to pay said note.

Inter. 6. Please state the exact consideration of the transfer of said note to you. If you bought it, say how much you paid for it?

Ans. 6. The consideration was my allowed claim against the estate, which I receipted for, and my assuming the payment of claims against the estate for a large amount, and I taking the chances of the amount of the note being equal to the amount of the claims. I can't tell just what I paid for the note, for the reason that there are claims yet
62 unsettled at the present time. The consideration paid for the note amounts to between five and six thousand dollars at present time.

Cross-interrogatories by plaintiff's attorneys:

Cross-int. 1st. Please state all that you know that may benefit the plaintiff or defendant in this suit as fully as if you had been more specifically interrogated.

Ans. 1st. I don't know of any thing more, except that I bought the note and paid for it at the time it was transferred to me, and no person has any interest in it but myself, and neither does the administrators of or the estate of W'm J. Chamblin have any interest, and have not had since I bought it.

Cross-int. 2d. State whether or not you know W. J. Chamblin? If yea, is he dead or alive; if you say he is dead, state, if you know, the State and county the said W. J. Chamblin was a resident citizen of at the date of his death, and how long had he been a resident citizen of the county and State where he lived at the date of his death?

Ans. 2d. I knew W. J. Chamblin; he is dead; he was a resident of Mason County, State of Illinois, at the time of his death; he had been a resident citizen of Mason County, Illinois, about 9 years before his death.

HENRY CEASE.

63 UNITED STATES OF AMERICA,
State of Illinois, Mason County:

I, Lyman Lacey, judge of the 17th judicial court, in the State of Illinois, and sole presiding judge of the circuit court of Mason County, Illinois, hereby certify that Leonard Schwenk, whose name is attached to the certificate to the within and foregoing depositions, is the clerk of said court, and was at the time of taking the same, and that his signature thereafter is genuine, and that his certificate thereto attached is in due form of law, and that as such clerk full faith and credit are due to all his official acts.

Witness Lyman Lacy, judge of said court, at Havana, this 29th day December, A. D. 1873.

LYMAN LACY,
Judge 17th Judicial Circuit of the State of Illinois.

STATE OF ILLINOIS,
Mason County, ss:

I, Leonard Schwenk, clerk of the circuit court in and for the county of Mason, in the State aforesaid, hereby certify that the Hon. Lyman Lacy, whose name is attached to the above certificate, is the judge of the 17th judicial circuit in said State of Illinois, and sole presiding judge of the Mason county circuit court of said State.

Witness, Leonard Schwenk, clerk of said court, and the seal thereof, at Havana, this 29th day of December, A. D. 1873.

LEONARD SCHWENK, *Clerk.*

64 STATE OF ILLINOIS,
Mason County, ss:

I, Leonard Schwenk, clerk of the circuit court within and for the said county and State, do hereby certify that, in pursuance of the annexed commission, I caused the said Talitha C. Chamblin, J. M. Winn, and Henry Cease, the witnesses named in the said commission and notice, and who' name are subscribed to the foregoing deposition, to appear before me, on the twenty-seventh day of December, 1873, as in said commission & notice specified; that previous to the commencement of the examination of the said Talitha C. Chamblin, J. M. Winn and Henry Cease, they were sworn according to law, to testify the truth, the whole truth and nothing but the truth, relative to the matters in controversy in the said cause now pending and undetermined in the United States circuit court for western district of Texas, between Henry Cease, plaintiff, and E. S. C. Robertson, defendant, so far as they should be interrogated concerning the same; that the said deposition was taken at Havana, in the said county of Mason, on the 27th day of December, 1873, between the hours of 10 o'clock a. m. and five o'clock p. m. of said day, and was
65 reduced to writing by me, who am neither of the parties in said suit, nor the attorney of either, nor interested in the event of the same; and after said depositions were taken by me as aforesaid, the interrogatories and the answers thereto of each witness, as written down, were read over to each of them, and that thereupon the same were duly signed and sworn to by the said T. C. Chamblin, J. M. Winn, and Henry Cease, before me, at the place and on the day and year aforesaid.

In witness whereof, I have hereunto affixed my hand and seal of office this 27th day of December, 1873.

LEONARD SCHWENK,
Clerk of the Circuit Court of Mason County, Illinois.

Rebutting evidence of pl'ff.

1. Depositions of M'r's T. C. Chamblin, H. Cease, J. M. Winn, M'r's Amy Warner, and Susan Crouse, endorsed: "No. 1472. Henry Cease vs. E. S. C. Robertson. Suit pending in the circuit court of the United States for the western district of Texas at Austin, Texas."

Answers and depositions of the witnesses, M'r's T. C. Chamblin, H. Cease, Doct. J. M. Winn, M'r's Amy Warner and M'r's Susan Crouse, addressed to the clerk of the circuit court of the United States for the western district of Texas, at Austin, endorsed: "Rec'd from p. office at Austin, and filed June 18, 1874. M. Hopkins, cl'k."

Opened under order of court January 19, 1874. M. Hopkins, cl'k. Endorsed 'cross seal: "Leonard Schwenk, clerk circuit court, Mason County, Illinois."

The interrogatories and cross-interrogatories are in words, to wit:

66 Suit pending in the circuit court of the United States for the western district of Texas, at Austin.

HENRY CEASE
vs. } No. 1472.
E. S. C. ROBERTSON.

Interrogatories to be propounded to M'r's T. C. Chamblin, H. Cease, Doct. J. M. Winn, M'r's Amy Warner, & M'r's Susan Crouse.

All of said witnesses are resident citizens of the county of Mason, in the State of Illinois.

Int'y 1st. (To each & all of said witnesses.) State whether or not you know the parties to this suit, and which of them.

Int'y 2nd. (To each and all of said witnesss.) This suit is brought by plaintiff against the defendant to recover the amount he claims to be due upon a note of hand in the words and figures substantially as follows, to wit:

$4,190.00.] BELTON, *October 2d*, 1860.

On the first day of July, 1861, I promise to pay to the order of D'r W. J. Chamblin, at the office of Mess'rs Chamberlin & Earle, in the town of Belton, Texas, the sum of four thousand one hundred and ninety dollars, with ten per centum interest from date, with current rate of exchange on N. Y., for value received.

(Signed) E. STERLING C. ROBERTSON.

67 And the defendant for the purpose of avoiding the payment thereof alleges that the note was given in part payment for a flock of sheep sold by the payee in said note to him, and that at the date of the sale and execution of the note the sheep had a disease called scab; that the said W. J. Chamblin knew it, and fraudulently concealed or withheld the fact from him and thereby perpetrated a fraud upon him; that he, Robertson, was ignorant of the fact, and that the said W. J.

Chamblin thereby defrauded him in said sale. Each one of you please state whether or not you knew the said W. J. Chamblin; if yea, did you know him before the 2nd day of October, 1861; if yea, how long had you known him prior to the last named date? If you have stated that you knew the said W. J. Chamblin before October, 1861, then please state if you know what business he was in from your first acquaintance with him up to what date. State whether or not he was ever engaged in raising sheep or had any knowledge of sheep-raising; if so, how long was he so engaged or in a position to understand the business of taking care of and raising sheep, and his means of knowing anything about the scab or any other disease, that sheep are injured or destroyed by, and please each one of you be particular and state your means of knowing?

68 Int'y 3rd. (To M'r's T. C. Chamblin.) Were you related to the said W. J. Chamblin; if yea, how were you related? If you answer that you was the wife of the said W. J. Chamblin, state whether you and the said W. J. Chamblin ever moved or traveled from the State of Illinois to Texas; if yea, what year was it, and how did you travel to Texas, and state whether or not the said W. J. Chamblin drove any sheep to Texas; if yea, how many? What county in Texas did he take them to? If you had said he took them to Bell County, what year did you and him get there, and what month? And state how far he kept the sheep from the defendant, E S. C. Robertson, if you know; how many sheep the said W. J. Chamblin got to Bell County with? If you know anything about it please state whether or not the flock of sheep was diseased in any way when you arrived in Bell County with them; if so, how? Did they have a disease called scab,? Please state all you know about it.

Int'y 4th. (To M'r's T. C. Chamblin.) If, in the preceding answer, you have stated that you travelled with the said W. J. Chamblin to Texas, and that he drove a flock of sheep through from Illinois to Texas,

69 state whether or not you was along with the flock or *road* all or most of the time, as the case may be. If you was then please state whether or not there was any number of sheep picked up or taken into the drove or herd on the road to Texas. If so, how many sheep were taken into the herd as you came along? and state your means of knowing, if you do know anything about it.

Int'y 5th. (To M'r's T. C. Chamblin.) Did you ever know a man by the name of David Brown; if yea, when, where, & how long did you know him? What was his occupation while you knew him? State whether or not he came with you and the said W. J. Chamblin from Illinois to Texas, when the sheep were drove out; if yea, *if yea*, what did the said Brown have to do with the sheep? Did he have any better chance than you did to know whether sheep were taken into the herd on the road? Did you ever hear him say anything about picking up or taking sheep into the herd as you came along, or after you arrived in Texas? Did you ever hear David Brown say anything about it? If so, state all he said about it.

Int'y 6th. (To the said T. C. Chamblin.) State whether or not you know anything about the W. J. Chamblin selling the defendant, Rob-

70 ertson, a flock of sheep; if yea, was it the flock that your husband, W. J. Chamblin, drove from Illinois to Texas? If yea, state whether or not you knew, at the time, anything about the condition of said sheep as to their health, and particularly whether or not they had the scab at that time, and state, if you know, whether or not the aforesaid David Brown was at that time the principal herder and controller

of said flock of sheep, and whether or not the said Brown, at or before that time, said anything about said sheep, or any of them, having a disease called the scab; if yea, state all he said about it. State whether or not you was present when the trade and sale of said sheep to defendant, Robertson, *you was present*; if yea, was the said David Brown present?

Int'y 7th. (To M'r's T. C. Chamblin.) If you have stated that you was present when the trade was consum'ated between the defendant, W. J. Chamblin for said sheep, then state, if you know, whether or not the said W. J. Chamblin told the defendant, Robertson, that a few of said sheep had the scab, and all that the said W. J. Chamblin told him about it, if anything.

Int'y 8th. (To all the above-named witnesses, except the said
71 T. C. Chamblin.) State whether or not you are acquainted with the business of raising sheep; if yea, state whether or not you know of a disease called scab sometimes among sheep; if yea, state how long after sheep take it before the ordinary observer would be likely to see it and know that the sheep had some disease, and then state whether or not it is a disease that can be easily cured if properly attended to in time, and state all else that you may know that will give information with reference to the question asked above.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Plaintiff.

Cross interrogatories to be propounded to all of said witnesses:

X-int. 1st. Please state when and where W. J. Chamblin died; in what year, and in what way; and state particularly who administered on his estate; how many children did he leave surviving; and did he also have a wife? Give the ages of each of his children and of his wife, and state whether she is alive, and, if so, whether she married again or is still single, and where does she and the children live.

X int. 2. Whose propepty was the note sued on at the time of the death of W. J. Chamblin? And if you say it belonged to W. J. Chamblin at the time of his death, please state if any efforts were made to col-
72 lect it, and, if so, by whom. And if you say there was an effort made to recover it by a suit in the district court of Bell County, who ordered that suit to be brought, and who paid the fees and costs, and how did it end? Was there not also another suit afterwards brought in the United States court, at Austin, to collect said note; if yea, who had that brought, and who paid the fees and costs, and how did that suit terminate?

X-int. 3rd. How did you happen, after you had twice failed to collect the said note, succeed in putting it off on, or in trading it to, or appearing to trade it, or traffic it off, to the plaintiff Cease? Did you tell him all the facts about your bad luck in your former lawsuits, or did you wilfully conceal them; and if you told him all, how did Cease come to buy under these circumstances? Tell us all about that understanding and agreement and contract by which Cease concluded to let you use his name instead of yours in bri ging this suit. Don't get angry and consider these questions as impertinent and refuse to answer them, but answer and tell all the facts about Cease's mode of acquiring this note; how he came to do it, and why he did it, and what he paid for it; and also tell us what business Cease is in. Is he a dealer and specu-
73 lator in uncollectable paper or in non-resident indebtedness, or what is his business? How many lawsuits did he ever have, and is he fond of them?

X-int. 4. If in answer to the 7th direct interrogatory you venture out

to boldly assert that you were present and heard a conversation between the defendant and W. J. Chamblin, in which W. J. Chamblin informed Robertson that a few of the sheep had scab, or informed him of something to that effect, please state, first, where and in whose house; second, in what year and in what month and on what day of the month did it occur; third, state who else was present and heard this conversation; and is such person dead or alive, and what kind of clothes was Robertson wearing when this conversation took place?

X-int. 5th. How long had David Brown, according to his own account and that of others, been engaged in raising and herding sheep; and could he not tell whether they had the scab or not?

HANCOCK, WEST & NORTH,
Att'ys for Def't.

The answers of the witnesses are in words, to wit:

74 Deposition of T. C. Chamblin, H. Cease, J. M. Winn, Susan D. Crouse, Amy Warner, endorsed, to wit: "Henry Cease vs. E. S. C. Robertson. Deposition of T. C. Chamblin, H. Cease, J. M. Winn, Susan D. Crouse, Amy Warner. Cl'k's fees on dep., $7.25."

Which is in words as follows, to wit:

M'r's T. C. CHAMBLIN, being first duly sworn, testified as follows, to wit:

Ans. to direct int. 1st. I am acquainted with the parties to this suit.

Ans. to 2 direct int. I knew W. J. Chamblin; I knew him before the 2d day of October, 1861. I had known him ten years prior to that date. He was engaged in the practice of his profession as physician and surgeon from my first acquaintance with him up to the time of his death. He never was engaged in the business of sheep-raising, and had no knowledge of it; the only means he ever had of knowing
75 anything about the disease of scab in sheep was the length of time he owned the sheep he sold to defendant Robertson. He never dealt in sheep before nor since that time. M'r Chamblin purchased this flock of sheep in the fall of 1859, and owned them about one year, and that is all the experience he ever had with sheep; he never bought nor sold any sheep except that one flock.

Ans. to 3rd direct int. I was related to W'm J. Chamblin; I was his wife. We moved from the State of Illinoes to Texas in the year 1859. We started from Illinois in August and arrived in Texas in November. We traveled with teams, and the herders went on horseback. M'r Chamblin drove a flock of sheep to Texas; about sixteen hundred head. We stopped in Bell County, Texas. We arrived in Bell County in November, 1859. The sheep were kept from two to three miles from the residence of the defendant Robinson. We got to Bell County with about the same number of sheep that we started with. At the time we got there, I heard nothing about the sheep having the disease called "scab." They were a choice flock of sheep; more so than any that were in the country. There had been no such fine sheep seen there before; that was the general talk of the country. They were picked from
76 different flocks of sheep in Illinois, and only the finest taken, and they were considered the best flock of sheep, and an extra price paid for them.

Ans. to 4th direct int. I was along with the flock of sheep on the road

from Illinois to Texas, except the first five or six days. From the time I was with the sheep, there was none picked up, except a very few that might have strayed into the flock. There was not one sheep bought along the road. There was not to exceed twenty sheep that got mixed in with the flock along the road. My means of knowing this was because I was along with the sheep, and we tried to keep the flock pure. They sometimes took out the stray sheep when we corraled them at night, and the doctor instructed his herders to keep the flock pure.

Ans. 5th int. direct. I knew a man by the name of David Brown. I knew him in 1859, when we purchased the sheep. The first that I saw him was in Sangamon County, Illinois, when we started for Texas. I knew him from that time until 1860—one year. He was engaged as herder, in the care of the sheep. He went with D'r W. J. Chamblin to Texas when the sheep were driven through. He helped drive them through. I don't know that he had any better chance to know whether any sheep strayed into the flock or not. We were both along
77 with the sheep. I know that there was especial pains taken to keep stray sheep out of the flock, and special directions given to the herders by the doctor to keep the flock pure. I don't recollect of hearing M'r Brown say anything about stray sheep getting into the flock.

Ans. to direct int. 6. I knew about M'r Chamblin selling defendant Robinson a flock of sheep. I knew it to be the same flock that my husband drove from Illinois to Texas. I knew about the condition of the sheep at the time, for I saw them every day—for they were corraled at home. Their general health and condition was good. I had not discovered it myself, but I heard it talked of, that there was a few of the sheep that were slightly affected with the scab; not more than one in about fifteen. Their fleece and the lambs were entirely unaffected with it, and both brought the highest price the market afforded. David Brown was the principal herder, and had charge of the sheep. I didn't hear him say anything about the sheep being affected with any disease. I was present when the sale of the sheep was made to defendant
78 Robinson. David Brown was not present when the sale was finally consummated at the house. M'r Robertson examined the sheep that day before the trade was finally made.

Ans. to 7th direct int. At the time the trade was finally consummated I heard nothing said about the sheep having the scab, but I did hear them talking about M'r Robertson's sheep having the scab, and the doctor told him it would be advisable to keep the flocks separate.

Cross-examination:

Ans. to cross-int. 1st. W. J. Chamblin died in Mason City, Mason County, Illinois, in April, 1871, from a gunshot wound. Doctor J. M. Winn and myself are administrators of his estate. He left three children and myself, his wife, surviving him. The children's names are Ida T. Chamblin, 14 years old, W'm J., aged 10 years, and Charles Edward, 8 years old, and my age is 39. His wife is not married again. All reside in Mason City, Illinois.

Ans. to cross-int. 2d. The note sued on belonged to the doctor at the time of his death. The note was in the hands of attorneys for collection at the time of his death. Herring and Anderson were the attorneys that had the note for collection at that time. I don't know whether there was a suit instituted in Bell County or not, but rather think
79 there was; if there was a suit brought, it must have been the doctor that ordered it. I don't know who paid the costs, and don't know

how it ended. I don't know whether there was a suit brought in the U. S. district court at Austin or not, but presume if there was such a suit brought, it was done by M'r Dodge, in whose hands I had placed it after the doctor's death.

Ans. cross-int. 3rd. I have not instituted any suit myself that I know of before I traded the note to Cease. The way I happened to trade it to Cease was because he was a creditor of the estate of W'm J. Chamblin, and he wanted his money or be made secure. I did not tell M'r Cease anything about the suits, as there was no questions asked, only as to the responsibility of M'r Robertson. There was no understanding, agreement, or contract with M'r Cease that I was to use his name in this suit. He made a bona-fide purchase of the note. The way M'r Cease come to purchase it, the estate was owing him and he wanted his money, and I assigned the note to him for his allowed claim, and got him to assume other indebtedness of the estate, and I don't know how he came to do it, unless it was to secure himself, and he would get his money sooner. The amount he paid for the note
80 was between five and six thousand dollars. M'r Cease is a large farmer and grain-dealer. I don't know that he deals in uncollectable paper or not. I have never known him to have any lawsuits. I don't think he is fond of lawsuits.

Ans. to cross-int. 4th. The conversation referred to in direct interrogatory 7th was in the house in which we lived in in Texas in the summer 1860. I think it was in September, but I can't remember the days of the month. There was no one present but M'r Robertson, Doctor Chamblin, and myself, that I remember of. I think M'r Robertson had on a white or very light linnen suit and a broad-brim leghorn or summer hat.

Ans. to cross-int. 4th. It was said that David Brown had been engaged in raising sheep for a number of years, but I don't know how long. I don't know whether he could have told whether the sheep had the scab or not.

T. C. CHAMBLIN.

M'r's SUSAN D. CROUSE, being first duly sworn, testifies as follows, to wit:

Answer to direct int. 1st. I am not acquainted with the parties to this suit.

Ans. to direct int. 2nd. I was acquainted with W'm J. Chamblin.
81 I knew him before the 2d day of October, 1861. I have known him since 1822, up to the time of his death. I think he was about 13 years of age when I first knew him, and think he went to school most of the time until he started West, and then engaged in studying medicine until he commenced practicing his profession. He never was engaged in raising sheep and never had any knowledge of sheep-raising. He was not in a position to understand the care of raising sheep. My means of knowing is from the fact that we were children together, and went in society together, and were always acquainted up to the time of his death.

Answer to 8th direct int. I know nothing about the matter inquired of in the 8th interrogatory.

Cross-examination:

Ans. to 1st cross-int. He, Chamblin, died about 3 years ago, in Mason County, Illinois; he left a wife and three children. I don't know the ages of the children. His wife is unmarried and still alive.

Ans. to 2d cross-int. I don't know anything about it.
Ans. to 3d cross-int. I don't know anything about this at all.
Ans. to 4th cross int. I don't know anything about it.
Ans. to 5 cross-int. I don't know anything about it.

SUSAN D. CROUSE.

1 day, 45 miles.

82 HENRY CEASE, being first duly sworn, testified as follows, to wit:

Ans. to direct int. 1st. I am not acquainted with M'r Robertson. I am the plaintiff in this suit.

Ans. to direct int. 2d. I was acquainted with W'm J. Chamblin. I got acquainted with him in the fall of 1861. I don't know what business he was engaged previous to that, only by report, that he was practicing medicine. I don't know whether he had any knowledge of sheep-raising or not; he was never in that business while I knew him.

Ans. to direct int. 8th. I have been in the sheep business about 10 years and have some knowledge of it. I do know of a disease amongst sheep called scab; it was amongst my flock at one time. Sheep might have the scab three or four months before a person would know or observe it. Sheep might take the scab right after they were shorn, and a person would not notice it, or they would not show it until the wool had pretty well grown out, and when they had plenty of wool on they would show it in less time. The disease can be easily cured if properly attended to and taken in time, so that the only injury would be to the wool that season. I have had sheep that had the scab so that they would lose nearly all the wool; and, after we sheared them, we
83 dipped them in tobacco, and they got well, so that the fleece was all right the next season. The general health of the sheep and their appetite was good while they had the disease, and all the damage that was done to our sheep was to the fleece for that year. My experience and general observation with sheep and sheep-raisers—it is a skin-disease, and does not affect the system of the sheep nor its general health, unless it is allowed to run.

Cross-examination:

Ans. to cross-int. 1st. W'm J. Chamblin died in Mason City, Illinois, in the year 1871. His widow and J. M. Winn administered on his estate. He left surviving him his wife, T. C. Chamblin, and three children. I don't know the ages of the children. The widow and children still live in the same house that the doctor occupied at the time of his death. The widow is still unmarried.

Ans. to cross-int. 2nd. I don't know, but suppose the note belonged to W'm J. Chamblin at the time of his death. I don't know anything about any attempt to collect the note until the commencement of this suit.

Ans. to cross-int. 3d. The way I came to buy the note was, the estate of W. J. Chamblin was owing me on a claim, which was already
84 allowed, and I was security for other claims, and the estate was largely in debt, and I wanted to make myself secure, and I took the note for my allowed claim against the estate and assumed the payment of other claims against the States to the amount of about five thousand dollars. There was no understanding or agreement with M'r's Chamblin, or any other person, that they were to use my name in any shape. On the contrary I was the bona-fide purchaser of the note. I am farming and in the grain business. I do sometimes buy notes, but

I don't aim to buy any that are uncollectable. I have had two lawsuits in my time, and am not at all fond of having lawsuits.

Answer to cross-int. 4th. I don't know anything about the matters therein referred to.

Answer to cross-int. 5th. I don't know anything about it.

HENRY CEASE.

Doctor J. M. WINN, being first duly sworn, testified as follows:

Ans. to direct int. 1st. I know Henry Cease, the plaintiff, but am not acquainted with the defendant.

Answer to direct int. 2nd. I was acquainted with W. J. Chamblin, and knew him before the 2d day of October, 1861. I have known him since he was a little boy; his first business after he was of age was practicing medicine, so far as I know up to that date. I don't think he ever
85 owned any sheep until he bought the flock of sheep he took to Texas. If he had any knowledge of sheep-raising, I know nothing of it. My means of knowledge is from being acquainted with him from boyhood.

Ans. to direct int. 8th. I am not acquainted with the business of raising sheep.

Cross-examination:

Answer to cross-int. 1st. W'm J. Chamblin died at Mason City, Ill's, April 29th, 1871, from a gunshot wound; his widow and myself are the administrator of his estate; he left 3 children surviving him, and also his wife, M'r's T. C. Chamblin. I can't tell their ages, the children are under age. M'r's Chamblin is still alive and is unmarried; they live near Mason City, Mason County, Illinois.

Answer to cross-int. 2nd. The note sued on belonged to W'm J. Chamblin at the time of his death. I don't know of any effort to collect the note of my own knowledge until this suit was commenced.

Ans. to cross-int. 3d. I never had tried to collect the note at all, but traded Cease the note in good faith to pay him a debt which he had against the estate of Chamblin. There was no agreement on contract with Cease in regard to using his name, in bringing this suit or
86 any other. M'r Cease had a claim against the estate of W. J. Chamblin and we traded him the note for his claim, and to secure him against liabilities for which he stood responsible for the estate; he is not a dealer in uncollectable paper. His business is that of a farmer and grain-dealer. I don't know anything about his lawsuits. I do know that he is not a contentious man, but is a good, substantial citizen.

Answer to cross-int 4th. Don't know anything about it.

Answer to cross-int. 5th. Don't know anything about it.

J. M. WINN.

1 day, 50 miles.

M'r's AMY WARNER, being first duly sworn, testified as follows:

Ans. to direct int. 1st. I know Henry Cease, but am not acquainted with defendant, Robertson.

Ans. to direct int. 2d. I knew Doc. W. J. Chamblin. I first knew him in 1864, and didn't know him prior to 1861.

Ans. to direct int. 8th. Don't know anything about it.

Cross-examination:

In answer to 1st cross-interrogatory she answers as follows: Doc. Chamblin died in Mason County about 3 years ago. Don't know who ad-

ministered upon his estate; he left 3 children and a widow. Don't
87 know their ages. The widow is still unmarried, and they all live near Mason City, Illinois.

In answer to 2d cross-interrogatory witness says she knows nothing about the matters therein enquired of.

In answer to 3d cross-interrogatory she says she knows nothing about it.

In answer to 4th cross-interrogatory witness says she knows nothing about it.

In answer to 5th cross-interrogatory witness says she knows nothing about it.

her
AMY + WARNER.
mark.

HENRY CEASE
vs.
E. S. C. ROBERTSON. } No. 1472.

Suit pending in the circuit court of the United States for the western district of Texas, at Austin.

Before the undersigned, clerk of the circuit court of Mason County, Illinois, duly qualified an' acting, appeared the parties named in the annexed interrogatories, to wit, M'r's T. C. Chamblin, H. Cease, Doct. J. M. Winn, M'r's Amy Warner, and M'r's Susan Crouse, and after I had duly sworn each of said parties according to law, I did propound
88 to each one of them, one at a time, the annexed direct and cross interrogatories, and to each of said interrogatories assigned to her, the witness, M'r's T. C. Chamblin, answered as follows: To 1st direct and to 2d direct, and to 3d direct, and to 4th, 5th, 6th, and 7th direct interrogatories, and to cross-interrogatories 1st, 2d, 3d, 4th, and 5th.

And to each of said interrogatories assigned to him, the witness, H. Cease, answers as follows: To 1st, 2d, and 8th direct interrogatories and to cross-interrogatories 1st, 2nd, 3d, 4th, and 5th.

And to each of said interrogatories assigned to him, Doct. J. M. Winn answered as follows: To direct interrogatories 1st, 2ad, and 8th, and to cross-interrogatories 1st, 2d, 3d, 4th, and 5th.

And to interrogatories assigned to her (M'r's Susan D. Crouse), answered as follows: To direct int. 1st, 2d, and 8th, and to cross int. 1st, 2d, 3d, 4th, and 5th.

And to interrogatories assigned to her, M'r's Amy Warner answered as follows: To direct int. 1st, 2d, and 8th, and to cross-int. 1st, 2d, 3d, 4th, and 5th.

And I, the said Leonard Schwenk, clerk of the circuit court of Mason County, Illinois, do hereby certify that each of said witnesses, to wit, M'r's T. C. Chamblin, H. Cease, Doct. J. M. Winn, M'r's Amy Warner, and M'r's Susan Crouse, did sign their names respectively to their
89 several sets of answers above set out, which were by me reduced to writing, and in my presence, and did then and there before me swear to the truth respectively of their respective answers.

To witness all which I hereto sign my name and affix the seal of office, at Havana, Illinois, this 13th day of June, A. D. 1874.

[L. S.] LEONARD SCHWENK, *Clerk.*

Plaintiff introduced M'r L. Atkinson, who testified that he was a sheep-raiser, and knew the disease known as the scab, and that it could be cured, &c.

Plaintiff then introduced the three following letters, written by E. Sterling C. Robertson, the defendant, to the plaintiff:

90

SALADO, BELL CO.,
April 3rd, '61.

Doct. W. J. CHAMBLIN,
Springfield, Illinois:

MY DEAR SIR: Yours of 24th of Jan'y has been rec'd and contents fully noted. I regret the necessity that has compelled Texas, in common with other Southern States, to secede from the Union, but we cannot tamely submit to Black Republican *roll* and negro equality. We have staked our all on the contest. Texas has gone out by an overwhelming majority, and the convention has ratified the constitution of the Confederate States by 130 to 2. None of us can tell what Lincoln's policy will be. If it is peace, all will soon be well; but if it is war, the struggle will be long and bloody. He can outnumber us; he may annihilate, but he never can make a subject people of us. Let him not be deceived; he may give Southern men coffins, but . We are certainly in earnest this time.

We are moving on in this neighborhood as usual. Our stock
91 has done finely the past winter. I have lost some eight or ten old sheep. Have at the present writing eight hundred lambs, and confidently expect to save one thousand barring all accidents after this. Our little village has twenty houses in it and nearly sixty pupils in our school. The college will be completed in about two months. My family are well. Please present my regards to M'r's C. and accept for yourself the well-wishes of

Yours, truly,

E. STERLING C. ROBERTSON.

SALADO, BELL CO.,
April 16, '61.

Doct. W. J. CHAMBLIN,
Springfield, Illinois:

DEAR SIR: I will have from five to six thousand pounds of wool for market; would it suit you to buy it and give me credit on my note? If you would buy, what can you allow me per lb. and to what point would you have it shipped; and indicate the difference between washed and unwashed wool, and what can you allow for it turned over to your agent in sacks at this place?

92 Your early attention and answer to the above questions will much oblige,

Yours, truly,

E. STERLING C. ROBERTSON.

P. S.—You know the quality of the wool.

SALADO, BELL CO.,
April 28, '61.

Doct. W. J. CHAMBLIN,
Mason City, Mason Co., Ill.:

DEAR SIR: Your extraordinary letter of 10th inst. has just been rec'd, in which you use the following language: "I rec'd a letter dated 20th Mar. stating that you did not intend complying with your contract, and if it was pushed on you would take advantage of the laws passed in consequence of the secession movement. As I suppose you and myself

being personal friends, I write you for a direct answer in the matters before I answer the note of the 20th of Mar., &c."

Now, sir, I am not in the habit of giving answers, either direct or indirect, to anonym'us scribblers or irresponsible parties. Hence, I
93 concluded your correspondent was one or the other, or you would have given me the benefit of his name. In the next place you have made no contract with me that authorizes you to put such a question to me at this time, as your contract does not fall due before the first of July next, therefore feel under no obligations to answer your interrogatories. As for your assertion that you are a citizen of Texas is a matter of no interest to me in the settlement of any matter of business between us. But I will say this much to you, that Texas, by cecession, has destroyed no vested right. If war is to come on us in all its horrors all business would stop during its continuance. If our property is destroyed our means of paying debts is gone; but such a thing as Southern repudiation in Texas, especially of past debts owing to citizens of the other States, or any part of the world, is as false as the Black Republican party. Our people owe no money they cannot pay if let alone. But our men are going to the field every day; seventy-five men left our county six weeks since, 30 about ten days since, and
94 27 left Belton yesterday—such men as Jalonick, Rather, Doctor Bradford, Doct. Embree, Doctor Ewing, the Whites, Hardin, &c., &c.—concentrating under Van Dorn, near Indianola, to drive from our soil Lincoln's men. I wrote of the 3rd & 16th of April. The last of said letters was on business, and I hope you will give me a prompt reply.

Yours, &c.,

E. STERLING C. ROBERTSON.

Plaintiff's testimony closed.

Defendant's testimony.

95 The deposition of H. J. Chamberlin is endorsed on envelope, to wit: "No. 1472. Henry Cease vs. E Sterling C. Robertson. Answers to interrogatories to H. J. Chamberlin. Received from the hands of J. B. Loper, notary public of M. C., this package. R. M. Wiley, postmaster, Davilla, Texas. To the clerk of the circuit court of the United States for the western district of Texas, at Austin, Texas. Rec'd from p.-office at Austin & filed January 8, 1874. M. Hopkins, cl'k. Opened by order of court, January 8, 1874. M. Hopkins, cl'k."

Circuit court of the United States for the western district of Texas, at Austin, law side.

HENRY CEASE *vs.* E. S. C. ROBERTSON. } No. 1472.

To Messrs. Coke, Herring & Anderson, and Chandler, Carleton, and Robertson, atty's of record of plaintiff in the above-entitled cause:

You will take notice that five days after the service of this notice and of the accompanying and attached interrogatories to the following-named witnesses on you, we will apply to the clerk of said court for a commission to take the answers of said witnesses to said interrogatories, to be used as evidence on behalf of the defendant on the trial of said cause, said witnesses being and residing as follows: H. Y. Cham-

berlin, of Milam County, Texas; D. A. Chamberlin, of Bell County, Texas; D. T. Chamberlin, of McLennan County, Texas; W. R.
96 Alexander, of Bell County, Texas; Charles S. Doubleday, of Bell County, Texas; D. T. Chamberlin, of McLennan County, Texas, and M. T. Miner, of Bell County, Texas.

To all of said witnesses:

Int'y st. Are you acquainted with the parties to the above-entitled suit, and do you know its object? If yea, state it.

Int'y 2nd. If, in answer to the above, you say it is a suit brought by Henry Cease on a promissory note for $4,190, dated the 2nd day of October, 1860, at Belton, Texas, executed by the defendant, Robertson, to one W. Y. Chamberlin, please state, if you happen to know, what was the real or supposed consideration of said note.

Int'y 3rd. If, in answer to the last interrogatory, you say it was given for a flock of sheep, please state as near as you can when and where the trade was made and what were its terms; and if you say the sale was partly for cash and partly on time, please state how much was in cash, and state how you know this to be the fact. If you say you counted out the money and saw the cash payment made, what amount was it, and where was it paid?

Int'y 4th. (To all of the witnesses, except D. T. Chamberlin.) If, in answer to any of the above, you say that the defendant, during the year 1860, purchased a flock of sheep in Bell County, Texas,
97 from Dr. W. Y. Chamberlin, please state, if you know, what was the condition as to health of said flock of sheep shortly before and shortly after M'r Robertson's purchase; and if you say you saw Robertson doctoring them for scab or having them doctored for scab, please say when this was, as near as you can, and the then consideration of the sheep; and please state, if you can, how you were able to judge of the condition of the sheep and of their disease; and if in this connection you say that you have been engaged in the sheep-raising and herding business, or have owned and bred sheep, or have had opportunities of understanding sheep, please state your experience and opportunity for knowing the condition of sheep as to health, and especially if the disease called scab; and in this connection briefly describe the nature and character of this disease, and its effect, if any, on the wool of the diseased sheep, and also its effect, if any, on the breeding question of such sheep; and state in this connection any other fact connected with this disease which will go to show its effect on sheep.

Int'y 5th. If, in answer to the above, you say the disease is of such an appearance and character as to escape the observation of one not skilled in sheep-raising and in their diseases, please state how
98 this is so, and why is not such disease patent to the eye and easily discovered at once?

Int'y 6th. Were you acquainted in 1860 with D. T. Chamberlin and with the defendant, Robertson? If yea, state if you happen to know, and say how you happen to know, the relative knowledge of Chamberlin and Robertson of the sheep business.

Int'y 7th. And if in answer to the above you say that Chamberlin raised and bred sheep, state how you happen to know it. And if you say that Robertson knew little or nothing of sheep, their habits and diseases, and had never, to your knowledge, been engaged in the sheep business, state fully how you know this to be the case and how long did you the two men, and what was the business of each.

Int'y 8th. State if you happen to know who had charge of the sheep

for Chamberlin shortly before their purchase by Robertson, and if you say David Brown, state what was their condition then. And if you say on one occasion before their purchases by Robertson, saw Brown doctoring them, in what manner and apparently for what disease, and how did you happen to be in the neighborhood at that time, and what were you engaged in then? And if you say in raising sheep there, how long have you been so engaged?

99 Int'y 9. (To W. R. Alexander alone.) State if you had any business transactions with W. Y. Chamberlin a short time previous to the purchase made by the defendant, Robertson, in regard to sheep. And if yea, state what opportunity you had, if any, to ascertain the condition of the flock. And if in this connection you say you bought some buck lambs or some young bucks out of the same flock, please state what was their condition as to health; and if you say they had the scab, how do you know it? Please state all the facts on this point.

Int'y 10th. (To C. S. Doubleday & M. T. Winn alone.) Please state if you ever had any connection with or control of the sheep above enquired about. And if yea, state when you took charge of them, and under what circumstances, and upon what terms, and what was their condition as to health. State all the facts on this point and also your means of information. Please state if you know how many sheep there were, and what finally became of them; and if you say the defendant sold or traded them off, state if you happen to know the terms of the trade and what he got for them.

Int'y 11. (To all the witnesses.) Please state any other fact, in your knowledge, as to the quality, kind, member, or condition of said

100 sheep, which will go to show that the trade between Chamberlin and Robertson was fair and honest on both sides, or to the contrary; and when so stating any fact, give the date and place of its occurrence as near as you can.

F. W. SLEEPER,
HANCOCK, WEST, & NORTH,
Att'ys for Defendant.

True copy of original & cross-int's filed Dec. 12, '73.
Test with seal of court this 13 Dec'r, 1873.
[L. S.] M. HOPKINS,
Clerk.

In the circuit court of the United States at Austin.

HENRY CEASE
vs.
E. S. C. ROBERTSON. } No. 1472.

Cross-interrogatories to be propounded to the witnesses, H. J. Chamberlin, D. A. Chamberlin, W. R. Alexander, Charles S. Doubleday, D. T. Chamberlin, & M. T. Miner. Cross-int. 1. (To all of said witnesses:) If in answer to the 2nd direct interrogatory you have stated

101 that you know what the note *note* described in said interrogatory was given for, please state how you know what it was given for. Did you ever see the note sued on in this case? How do you know you have ever seen the identical note for $4,190.00 sued on in this suit? Did you ever have it in your possession? If not, please state who told you what it was given for and when you were told what the note was given for. Did W. J. Chamberlin, the payee of the note, ever tell you

what it was given for? Please state how you know what the note sued on in this case was given for, or the consideration for which it was given.

Cross-int'y 2nd. (To the witness D. T. Chamberlin.) If, in answer to the 4th direct interrogatory, you have stated that the defendant, Robertson, purchased a flock of sheep from W. J. Chamberlin in 1860, please state the day of the month and year. Answer as you can. And if you have further stated that you saw defendant, Robertson, doctoring the sheep for the scab, please give the date when you first saw him doctoring them. Did Robertson have or own any other sheep before or after he purchased from W. J. Chamberlin except those purchased from Doctor Chamberlin?

102 Cross-int. 3rd. (To D. T. Chamberlin.) How long could sheep ordinarily have the scab before it would be discovered by ordinary observation by any one of ordinary sense that was interested in the sheep? Would not an ordinarily good shephard discover it very soon?

Cross-int. 4th. (To D. T. Chamberlin.) Is it not true that soon after Robertson purchased the sheep there was sheep in the same range, that belonged to other parties, that had the scab?

Cross-int'y 5th. (To the witness W. P. Alexander.) Where did you live from the 1st of January, 1860, to Sept., 1861, and how far from the defendant, Robertson?

Cross-int'y 6th. (To the witness C. S. Doubleday and M. T. Minen.) If, in answer to the 10th direct interrogatory-in-chief, you, or either of you, have stated that you ever had any connection with or control of any sheep the property of the defendant, Robertson, please state how you know who the defendant, Robertson, got them from, or who he told you he purchased them from. When did you first have control or management of the sheep referred to in said direct interrogatory? Please give the date as near as you can. Did either or both of you ever

103 give testimony in any suit about said sheep before this? If so, please state when and where.

Cross-int'y 7th. (To all of said witnesses.) If you have made any statements in answer to the 11th and last direct interrogatory, please state when and from whom you obtained the information of the facts that you stated. Give the name of each party and the date, as near as you can.

CHANDLER, CARLETON & ROBERTSON,
Attorneys for Plaintiff.

I, Matthew Hopkins, clerk of the circuit court of the United States for the western district of Texas, at Austin, do hereby certify that the foregoing and annexed pages contain a full and true copy of the direct and cross-interrogatories in the case No. 1472, entitled Henry Cease vs. E. S. C. Robertson, filed in this court in said cause.

Witness my hand and seal of court, at Austin, this 2nd day of January, A. D. 1874.

M. HOPKINS, *Clk.*

104 UNITED STATES OF AMERICA:

Circuit court of the United States, western district of Texas, holding sessions at Austin.

The President of the United States to any officer authorized by the laws of Texas and the practice of the district courts of the State to take depositions of witnesses, greeting:

Know ye that, reposing trust in your integrity and fidelity, we have,

and by these presents do nominate, constitute, appoint, commission, and require you to cause H. J. Chamberlin, of the county of Milam, to come before you at such time and place as you may appoint, and that you then and there carefully and fully examine him upon oath or affirmation first taken before you touching the annexed interrogations & cross-int's.

1. That you reduce his answers so taken to writing, in proper form, and cause the same to be subscribed and sworn to before you by said witnesses.

2. That you certify, under your hand and seal of office, that said answers were sworn to and subscribed before you.

3. That you seal up in an envelope the answers so taken, together with the annexed interrogatories and this commission, with your name written across the seal thereof.

4. That you endorse on said envelope the names of the parties to said suit as well as the names of said witnesses.

5. Address the package to the "Clerk of the Circuit Court of the United States for the Western District of Texas, at Austin."

6. That if said package be transmitted by the public mail, the postmaster shall endorse thereon that he received it from your hands, and sign his name thereto; which answers, when so taken and returned as aforesaid, are to be read in evidence in a certain suit now pending in said circuit court of the United States at Austin, wherein Henry Cease is plaintiff, and E. Sterling C. Robertson is defendant. No. 1472.

Herein fail not, but due return make of this commission, with your proceedings had by virtue thereof, to our said circuit court, at Austin, before the return day of the next term, to be begun and held at Austin on the first Monday in January next, A. D. 1874.

Witness the Hon. Nathan Clifford, Associate Justice Supreme Court of the United States, and the seal of our said circuit court, at Austin, this 15 day of December, 1873.

[L. S.] M. HOPKINS, *Clerk.*

105 Answers to interrogatories propounded to H. J. Chamberlin in the case wherein Henry Cease is plaintiff and E. S. C. Robertson is defendant.

Ans. to int. 1st. I am acquainted with the defendant, E. S. C. Robertson. It is my information that the object of said suit is to collect a certain amount of money ($4,190 and interest upon same) from the def't, claimed by pl'f, upon a promissory note signed by said Robertson, and made payable to W. J. Chamberlin.

Ans. to int. 2nd. I received my information as to what the note was, or the consideration was claimed to be, from D. T. Chamberlin, E. S. C. Robertson, and others.

Ans. to int. 3rd. I do not know the exact time M'r Robertson and Chamberlin made their sheep trade or the amount of money paid. On arriving at Bell Co., November, A. D. 1860, I was shown a flock of sheep claimed by E. S. C. Robertson, and was told that they were bought of D'r W. J. Chamberlin, and that said Robertson executed his promissory note as a part of the consideration for said sheep. If anything was told me of money paid, I have forgotten it.

Int. 4th. The condition and health of said flock of sheep when I first saw them, in November, A. D. 1860, was good, with the exception
106 that *that* they had what is known as the "scab." It is my belief that it was in the spring of 1861 that I personally first knew of M'r Robertson's men doctoring his sheep, The scab had then increased a good deal. I was able to judge of said sheep by seeing their several times, and being familiar with the sheep business and their diseases.

I *have* had at the time mentioned been engaged more than twenty years in sheep-raising.

The disease known as the "scab" is in its nature very similar to the itch upon the human person. It is caused by insects burying itself in the skin of the sheep, which pro*f*uces ir'itation, and causes the sheep to bite, rub, and scratch themselves, tearing off their wool, and worrying themselves, to their great injury, and producing great loss of sheep and wool. If not checked in its progress, sheep suffering from the scab soon become so reduced in their system that their offspring, if any they have, are almost worthless. When the scab first makes it' appearance, and for a considerable time, a person not familiar with it would not notice it very much, and only after the range and flocks has been infected and exposed to infected sheep does the disease seem to spread rapidly.

107 Int. 5. I think my previous answer will show why the scab is not "patent" to the eye at first. It is a very small insect or "acors" that produces or causes the scab. It is t*w*o small to be *pre*ceptible to the naked eye. It burys itself in the skin and remains s*a*me twelve to fourteen days, when it again comes to the surface with its young, and not until these "acorrs" become numerous does the sheep become so much ir'itated as to tear off much wool to make the disease patent to an unskilled eye.

Int'y 6th. I was acquainted, in 1860, with D. T. Chamberlin, and with the defendant in this suit. I knew that D. T. Chamberlin was raised upon a sheep-farm. I was informed that M'r Robertson had been engaged in land and cattle business since entering into active life; that his only experience with sheep had been at the time the Chamberlin sheep were bought with a small flock of c*o*urse-wooled sheep. I was informed, and good reason to believe from observation, that the disease known as the "scab" had existed but a short time in Texas when I arrived in 1860, and those who had not known the disease in other States were not familiar with it.

108 Int'y 7. In this interrogatory I suppose the name Chamberlin is intended to be Chamblin. I did not know Chamblin. I knew Col. E. S. C. Robertson first in November, A. D. 1860, and what I learned of him and his past history was told me by himself and his neighbors.

Int'y 8th. I did not see said flock of sheep while in the hands of D'r Chamblin.

Int'y 10th. I never had any connection or control with said sheep, except I furnished some help and rendered some assistance to Col. Robertson's men in their endeavors to cure the scab on said flock of sheep. I do not know the exact number of said sheep; I judge there were about one thousand when I first saw them; there might not have been more than eight hundred. I saw said flock of sheep frequently until the number were reduced to a small flock. I judged there were then between one and two hundred. This last time I saw the flock was, I think, about three years ago. They were then in care of a M'r Miner, I think. I did not know anything of the selling of said sheep by Col. Robertson.

Int'y 11. Said flock of sheep known as the Chamblin sheep
109 were a fair quality of Merino sheep, and presented a very good appearance the first time I saw them. I personally knew nothing of the trade between Col. Robertson and D'r Chamblin; were not in the State at the time it was made. The scab seemed to grow worse or show its effect more upon said flock of sheep from season to season, as long as continued to see them, and when last I saw them they were of little value per head.

H. J. CHAMBERLIN.

Sworn to and subscribed before me, J. B. Loper, notary public, Milam Co., Texas. In testimony of which I sign my name and affix my official seal, in Milam Co., this Jan'y 2, 1874.

[L. S.]

J. B. LOPER,
Notary Public, Milam Co.

Ans. to cross-interrogatories.

HENRY CEASE
vs.
E. S. C. ROBERTSON.

Ans. to cross-int. 1st. I do not know whether I ever saw the note mentioned or not. My impression is I saw it while in the hands of D. T. Chamberlin; am not certain; what the note was given for and about was told me by Col. Robertson, D. T. Chamberlin, and others.

Cross-int. 2nd. How I got my information and where I got it
110 is stated in the direct interrogatories about as clearly as I can now do it.

H. J. CHAMBERLIN.

Sworn to and subscribed before me, J. B. Loper, notary in and for Milam County, Tex. In testimony of which I sign my name and affix my seal of office, in Milam County, Texas, this Jan'y 2nd, 1874.

[L. S.]

J. B. LOPER,
Notary Public, Milam Co.

The depositions of W. R. Alexander, C. S. Doubleday, D. A. Chamberlin, and M. T. Minor is indorsed: "Henry Cease vs. E. S. C. Robertson. Depositions of W. R. Alexander, C. S. Doubleday, D. A. Chamberlin, and M. T. Minor. Received these depositions at the hand of E. S. C. Robertson, who on oath says that he received them from the hand of the officer who took the same; that they have not been out of his possession, opened, altered, or changed in any respect, but are delivered intact as received. Sworn and subscribed before me this 19th January, 1874. M. Hopkins, cl'k. Filed Janu'ry 19, 1874. M. Hopkins, cl'k."

Rec'd from the hands of H. H. Parker, notary public, the officer before whom taken. E. Sterling C. Robertson, clerk of the circuit court of the United States for the west. district of Texas, at Austin.

(Across seal, endorsed:) H. H. Parker, notary public.

111 NOTE BY CLERK.—The copy of interrogatories attached to the commission having been mislaid, the original interrogatories and cross-interrogatories are used in place and stead, and are in words, to wit:

Interrogatories to D. A. Chamberlin, H. J. Chamberlin, D. F. Chamberlin, W. R. Alexander, C. S. Doubleday, M. T. Minor, endorsed as follows, to wit: "1472. Circuit court of the United States, western district of Texas, at Austin, law side. Cease vs. Robertson. Interrogatories to D. A. Chamberlin, H. J. Chamberlin, D. F. Chamberlin, W. R. Alexander, C. S. Doubleday, M. T. Minor."

We waive notice & agree that commission may issue instanter.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Plaintiff.

SLEEPER, HANCOCK, WEST & NORTH,
Att'ys for Def't

Filed Dec. 12, 1873.

M. HOPKINS, *Clk.*

Commission & copy iss'd Dec. 12, '72; which is in words following, to wit:

112 Circuit court of the United for the western district of Texas, at Austin. Law side.

HENRY CEASE
v.
E. S. C. ROBERTSON. } No. 147 ½.

To Mess. Coke, Herring & Anderson, and Chandler, Carleton & Robertson, attorneys of record of the plaintiff in the above-entitled cause:

You will take notice that, five days after the service of this notice and of the accompanying and attached interrogatories to the following-named witnesses on you, we will apply to the clerk of said court for a commission to take the answers of said witnesses to said interrogatories, to be used as evidence on behalf of the defendant on the trial of said cause; said witnesses being and residing as follows: H. J. Chamberlin, of Milam County, Texas; D. A. Chamberlin, of Bell County, Texas; D. T. Chamberlin, of McLennan County, Texas; W. R. Alexander, of Bell County, Texas; Charles S. Doubleday, of Bell County, Texas; and M. T. Minor, of Bell County, Texas.

F. H. SLEEPER, HANCOCK, WEST & NORTH,
Att'ys for Def't.

Interrogatories to be propounded to H. J. Chamberlin, of Milam County, Texas; D. A. Chamberlin, W. R. Alexander, Charles S. Doubleday,
113 of Bell County, Texas; D. T. Chamberlin, of McLennan County, Texas; and M. T. Minor, of Bell County, Texas.

To all of said witnesses:

Int. 1. Are you acquainted with the parties to the above-entitled suit, and do you know its object? If yea, state it.

Int. 2. If in answer to the above you say it is a suit brought by Henry Cease on a promissory note for $1,190, dated the 2 of October, 1860, at Belton, Texas, executed by the defendant, Robertson, to one W. J. Chamblin, please state, if you happen to know, what was the real or supposed consideration of said note.

Int. 3. If in answer to the last interrogatory you say it was given for a flock of sheep, please state, as near as you can, when and where the trade was made and what were its terms; and if you say the sale was partly for cash and partly on time, please state how much was in cash, and state how you know this to be the fact. If you say you counted out the money and saw the cash payment made, what amount was it, and where was it paid?

To all the witnesses except D. T. Chamberlin:

Int. 4. If in answer to any of the above you say that the defendant during the year 1860 purchased a flock of sheep in Bell County, Texas, from D'r W. J. Chamblin, please state, if you know, what was
114 the condition, as to health, of said flock of sheep shortly before and shortly after M'r Robertson's purchase; and if you say you saw Robertson doctoring them for scab, or having them doctored for scab, please say when this was, as near as you can, and the then condition of the sheep; and please state, if you can, how you were able to judge of the condition of the sheep and of their disease; and if in this connection you say that you have been engaged in the sheep raising and herding business, or have owned and bred sheep, or have had opportu-

nities of understanding sheep and their diseases, please state your experience and opportunity for knowing the condition of sheep as to health, and especially of the disease called scab, and in this connection briefly describe the nature and character of this disease, and its effect, if any, on the wool of the diseased sheep, and also its effect, if any, on the breeding qualities of the sheep; and state in this connection any other fact connected with this disease which will go to show its effect on sheep.

Int. 5. If in answer to the above you say that the disease is of such an appearance and character as to escape the observation of one
115 not skilled in sheep-raising and in their diseases; please state how this is so, and why is not such disease patent to the eye and easily discoverable at once?

Int. 6. Were you acquainted in 1860 with D'r W. J. Chamblin and with the defendant, Robertson? If yea, state, if you happen to know, and say how you happen to know, the relative knowledge of Chamblin and Robertson of the sheep business.

Int. 7. And if in answer to the above you say that Chamblin raised and bred sheep, state how you know it. And if you say that Robertson knew little or nothing of sheep, their habits and diseases, and had never to your knowledge been engaged in the sheep business, state fully how you know this to be the case, and how long did you know the two men, and what was the business of each.

Int. 8. State, if you happen to know, who had charge of the sheep for Chamblin shortly before their purchase by Robertson, and if you say David Brown, state what was their condition then; and if you say you, on one occasion before their purchase by Robertson, saw Brown doctoring them, in what manner and apparently for what disease, and how did you happen to be in the neighborhood at that time, and what were
116 you engaged in then, and if you say in raising sheep there, how long have you been so employed.

Int. 9. (To W. R. Alexander alone.) State if you had any business transactions with W. J. Chamblin, at short time previous to the purchase made by the defendant, Robertson, in regard to sheep; and, if yea, state what opportunity you had, if any, to ascertain the condition of the flock; and if in this connection you say you bought some buck lambs, or some young bucks out of the same flock, please state what was their condition as to health; and if you say they had the scab, how do you know it? Please state all the facts on this point.

Int. 10. (To C. S. Doubleday and M. T. Miner alone.) Please state if you ever had any connection with or control of the sheep above enquired about; and, if yea, state when you took charge of them, and under what circumstances, and upon what terms; and what was their condition as to health. State all the facts on this point, and also your means of information. Please state, if you know, how many sheep there were, and what finally became of them; and if you say the defendant sold or traded them off, state, if you happen to know, the terms of the trades, and what he got for them.

117 Int. 11. (To all the witnesses.) Please state any other fact in your knowledge as to the quality, kind, number, or condition of said sheep which will go to show that the trade between Chamblin and Robertson was fair and honest on both sides, or to the contrary. And when so stating any fact, give the date and place of its occurrence, as near as you can.

F. H. SLEEPER.
HANCOCK, WEST & NORTH,
Att'ys for Def't.

In circuit court of the United States, at Austin.

HENRY CEASE
vs.
E. S. C. ROBERTSON. } No. 1472.

Cross-interrogatories to be propounded to the witnesses H. J. Chamberlin, D. A. Chamberlin, W. R. Alexander, Charles S. Doubleday, D. T. Chamberlin, and M. T. Minor.

Cross-int'y 1st. (To all of said witnesses.) If in answer to the 2nd direct interrogatory you have stated that you know what the note described in said interrogatory was given for, please state how you know what it was given for. Did you ever see the note sued on in this case? How do you know you have ever seen the identic*le* note for $4.190.00 sued on in this suit? Did you ever have it in your possession? If not, please state who told you what it was given for, and when you were told what the note was given for? Did W. J. Chamblin, the payee of the note, ever tell you what it was given for? Please state how you know what the note sued on in this case was given for, or the consideration for which it was given.

Cross-int'y 2nd. (To the witness D. T. Chamberlin.) If in answer to the 4th direct interrogatory you have stated that the defendant,
119 Robertson, purchased a flock of sheep from W. J. Chamblin, in 1860, please state the day of the month and year, as near as you can. And if you have further stated that you saw defendant, Robertson, doctoring the sheep for the scab, please give the date when you first saw him doctoring them. Did Robertson have or own any other sheep before or after he purchased from W. J. Chamblin, except those purchased from Doctor Chamblin?

Cross-int'y 3d. (To D. T. Chamberlin.) How long could sheep ordinarily have the scab before it would be discovered by ordinary observation by any one of ordinary sense that was interested in the sheep; would not an ordinarily good shepherd discover it very soon?

Cross-int'y 4th. (To D. T. Chamberlin.) Is it not true that soon after Robertson purchased the sheep there was sheep in the same range that belonged to other parties that had the scab?

Cross-int'y 5th. (To the witness W. P. Alexander.) Where did you live from the first of January, 1860, in Sept., 1861, and how far from the defendant Robertson?

Cross-int'y 6th. (To the witness' C. S. Doubleday and M. T. Minor.) If, in answer to the 10th direct interrogatory-in-chief, you or
120 either of you have stated that you ever had any connection with or control of any sheep, the property of the defendant Robertson, please state how you know who the defendant Robertson got them from, or who told you who he purchased them from. When did you first have control or management of the sheep referred to in said direct interrogatory? Please give the date, as near as you can. Did either or both of you ever give testimony in any suit about said sheep before this? If so, please state when and where.

Cross-int'y 7th. (To all of said witnesses.) If you have made any statements in answer to the 11th and last direct interrogatory, please state when and from whom you obtained the information of the acts that you stated. Give the name of each party, and the date as near as you can.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Plaintiff.

The answers of the witnesses are, to wit:

Circuit court of the United States for the western district of Texas, at Austin.

HENRY CEASE
vs.
E. S. C. ROBERTSON. } No. 1472.

Answer and deposition of D. A. Chamberlin, W. R. Alexander, C. S. Doubleday, and M. T. Minor, of Bell County, Texas, to the accompanying interrogatories propounded to them in the above-entitled cause, taken before H. H. Parker, notary public in and for Bell County, Texas, in accordance with the accompanying commission.

Answer of the witness W. R. Alexander to int. 1st. He says: I am acquainted with defendant Robertson, but not with Henry Cease. I do know the object of this suit. It is a suit brought upon a promissory note given by E. S. C. Robertson to W. J. Chamberlin in part payment for a flock of sheep bought by defendant Robertson of said Chamberlin in the year 1860.

Ans. to int. 2nd. This note of E. S. C. Robertson for 4,190 dollars, dated October 2nd, 1860, to W. J. Chamberlin, sued on by Henry Cease, was given in part payment for a flock of sheep sold by plaintiff Chamberlin to defendant Robertson.

Ans. to int. 3rd. I know that the trade was made about the date of the note sued on, but cannot state where, nor the precise date of
122 the trade. I have no actual knowledge of the terms of the trade, only that I heard it stated by both parties that the trade was made partly for cash and partly on time. I do not recollect the amounts, but I know that there was a cash payment made on the trade from the statement of both parties. I heard both parties state that such cash payment had been made. I did not see the payment made, nor did I count the money.

Ans. to int. 4th. I know that at the time of the sale of said flock of sheep, in Bell County, Texas, by W. J. Chamberlin to E. S. C. Robertson, of said county, that said flock of sheep had the disease known as "scab." I saw defendant having said sheep doctored for scab not long after he purchased them. Could not state exactly how long after the purchase. The flock, at the time I saw said Robertson having them doctored, was in a very bad condition; their general health was seriously impaired by the scab. I judge of the general constitution of the sheep by the wool coming out, irruption and sores on the skin, and the generally declining condition of the flock. I owned a flock of
123 sheep at the time the defendant, Robertson, bought said flock of plaintiff, Chambelin.

Ans. to int. 4th continued. I owned said flock of sheep three or four years before the defendant purchased the flock of plaintiff, and had never had any such disease as scab in my flock until after such purchase of defendant of plaintiff. Scab in sheep reduces the value of the wool greatly, and reduces the quantity from such sheep. Lambs coming from scab'ed ewes come feeble; the diseased, emaciated mother furnishes nourishment deficient in quantity and quality; from these causes most of the lambs die before they are grown, and what few lives to be grown are almost worthless.

Ans to int. 5th. When the disease is in its incipiency an inexpe-

rienced person would not be likely to suspect its existence; but when further advanced, when the wool begins to fall off freely, when large sores make their appearance over the surface of the animal, and when the general health has given way, then the diseased condition is patent to the most inexperienced. The reason why said disease is not
124 "patent to the eye and easily discovered" is because it is a diseased condition of the skin, under the wool, and is not at first discoverable without minute inspection.

Ans. to int. 6th. I was acquainted with both W. J. Chamberlin and E. S. C. Robertson in the year 1860. I know that said Chamberlin had owned and been managing sheep for a year or two before the sale by him to defendant, and I know that he professed to understand the sheep business generally; and I know that defendant, Robertson, knew nothing about the sheep business at the time of his purchase from the plaintiff, Chamberlin.

Ans. to int. 7th. I know that plaintiff brought a flock of sheep to this country, and stated that he had been in the business some time, and professed to understand the sheep business generally. I know that defendant, Robertson, knew nothing of the sheep business because I had lived a near neighbor to him for seven or eight years, and I know that his whole time was given to other business, and that up to the time of the purchase by defendant from plaintiff that he (the defendant)
125 owned no sheep that he gave any attention to; and I know that up to the time of such purchase by said defendant from plaintiff that defendant knew nothing of the habits or diseases of sheep. I had known defendant, Robertson, for eight or ten years at the time of the purchase by him of defendant, and I know that he had been farming and attending to his land interests. I knew plaintiff, Chamberlain, for a year and a half or two years previous to the trade, and know that he was engaged in the sheep business all that time.

Ans. to int. 8th. I know a man by the name of Brown (I do not know his given name), who had charge of the flock of sheep belonging to plaintiff at the time of the purchase of said flock by defendant and for some time previous. Said flock of sheep appeared to be in good condition at the time of the purchase by defendant. I did not see Brown doctoring them. I was not in the neighborhood at the time. I was engaged in farming, and had a flock of sheep numbering four or five hundred. I had been raising sheep about three years at the time defendant purchased of *defendant*.

126 Ans. to int. 9th. I had a business transaction with W. J. Chamberlin a few days before the purchase by defendant of him. I bought a few bucks from W. J. Chamberlin a few days before the purchase by defendant, and found that they had the scab, after they had communicated it to my flock. The bucks bought by me of W. J. Chamberlin had the scab.

Ans. to cross-int. 5th. From the 1st of January, 1860, to September, 1861, I lived within two miles of defendant, Robertson, in Bell County, Texas.

Ans. to cross-int. 7th. I have fully answered this in my answer to previous interrogatories.

W'M R. ALEXANDER.

D. A. CHAMBERLAIN answers:

Int. 1st. I am acquainted with both W. J. Chamberlin and E. S. C. Robertson.

Ans. to int. 2nd. I am acquainted with the object and nature of this suit.

Ans. to int 3rd. I heard both parties say that plaintiff, Chamberlin, sold defendant, Robertson, a flock of about one thousand head for five dollars a head.

Ans. to int. 4th. I know that defendant, Robertson, bought a
127 flock of sheep of plaintiff, Chamberlin, in the fall of 1860. Shortly before said sale the sheep were in fine condition as to flesh. I saw the sheep being doctored by W. J. Chamberlin's head-shepherd, David Brown, some two or three weeks before the sale to defendant. I at that time was part owner of a flock of sheep on a ranch adjoining that of W. J. Chamberlin, and some of my sheep got into Chamberlin's flock.

Ans. to int. 4th continued. I went to Chamberlin's ranch one morning before his sheep were turned out, to get *any* sheep out of his flock. I found David Brown doctoring Chamberlin's sheep with tobacco ooze, out of an old two-gallon coffee-pot, by opening the wool and pouring the decoction of tobacco on the diseased spots that they had been rubbing the day before. And he, David Brown, stated to me that they wanted to keep down the scab until W. J. Chamberlin could sell the sheep. David Brown, in doctoring the sheep, opened the wool over the affected parts, poured in the decoction, and then closed the wool over the spot again. After defendant bought the flock of sheep I knew but little, except by rumor, in that range. My father devoted most of his life to
128 sheep-husbandry, and I have been engaged in the sheep business all my life until since the war. I know that sheep affected with scab are worthless, either for wool or breeding, unless skillfully managed and treated.

Ans. to int. 4th continued. I can readily detect the disease—scab—in sheep. At first it makes but little change in the appearance of the sheep, but it spreads rapidly, destroying both wool and sheep, unless it is controlled. One not acquainted with scab would not be apt to discover it until the wool begun to fall off. Myself and brother bought some bucks from W. J. Chamblin about the same time that defendant bought his flock, and they were badly diseased with scab. I knew that the bucks were diseased with scab, but it had not made its appearance visibly in the main flock to that extent. I say that I am familiar with effects of scab in sheep, and know that sheep affected with it is worthless for wool or breeding purposes. I know that the disease is not visible to or recognizable by an inexperienced person for some time after its inception or onset, and therefore it would not be suspected—

129 Ans. to int. 4th continued—By one not familiar with that disease. This is so, because it is a disease of the skin, and covered by the wool, where it spreads rapidly over the animal affected, and from one to another, until, if not checked, it destroys the whole flock. I know the disease by the sheep biting themselves, rubbing against anything the' come across, rolling on the ground, and then, by opening the wool and examining the condition of the skin, we find small livid or purple spots, which are pathognomic of the disease.

Ans. to int. 6th. I was acquainted with W. J. Chamblin, the plaintiff, and E. S. C. Robertson, the defendant, in the year 1860. I know that plaintiff Chamblin, in the fall of 1859, brought a flock of sheep into Bell County, Texas, and put them on a ranch three miles south of Salavo, where he kept them until he sold them to defendant, Robertson. I know nothing as to the knowledge of the defendant in the sheep business.

Ans. to int. 7th. I know that W. J. Chamblin bred and raised sheep, or attempted to do so, from the fall of 1859 up to the date of the
130 sale to defendant. I know, because I saw the sheep every day, and had my sheep on an adjoining ranch. I know nothing of the knowledge of the defendant, Robertson, in the sheep business previous to the purchase of Chamblin's flock by him. W. J. Chamblin was in the sheep business. E. S. C. Robertson was farming and attending to his landed interests.

Ans. to int. 8th. David Brown had charge of W. J. Chamblin's flock; he came into the county with them, and remained with them up to the time of the sale to defendant, Robertson. At the time of the sale the appearance of the sheep was good, except that they had scab, which would not have been detected by an inexperienced person or one not acquainted with the sheep business.

D. A. CHAMBERLIN.

Ans. to int. 8th continued. I saw David Brown doctoring said sheep before the sale to defendant, with an old two-gallon coffee-pot, parting the wool down to the skin and pouring in the decoction of tobacco, and then replacing the wool, as he told me, to keep down the disease until W. J. Chamblin could find a purchaser, or until he could sell them.
131 Brown told me that he was doctoring the sheep for scab. I went to Chamblin's ranch to get my sheep out of his flock, the time I saw David Brown doctoring the sheep. I had been engaged in sheep-husbandry all my life up to that time.

Ans. to int. 11th. It was estimated that there was one thousand head of sheep in W. J. Chamblin's flock. Chamblin wanted us (myself & brother) to buy the sheep, and said to me that they were free from scab, and that he was doctoring as a preventative.

Ans. to int. 8th continued. I know nothing about the trade between plaintiff and defendant except from hearsay.

Ans. to 7th cross-int. I derived my knowledge from plaintiff himself, at his own house. He told me that he wanted to sell his flock and go back to Illinois; that there was about one thousand head, and that he would take five thousand dollars down for them. He stated to me that the sheep were free from scab, and got a good deal excited because I asked him what he was doctoring the sheep for if it was not for scab. He said that he was using the tobacco as a preventative, and that the
132 sheep did not have scab. This occurred not one week before the sale to defendant, Robertson.

The witness C. S. DOUBLEDAY answers to int. 1st: I am acquainted with E. S. C. Robertson, but not with Henry Cease; I do not know the object of this suit.

Ans. to int. 2nd. I know nothing of the matters contained in this interrogatory.

Ans. to int. 3rd. I know nothing about the matters contained in the 3rd interrogatory.

Ans. to int. 4th. What I know in regard to matters contained in this interrogatory will be fully stated in my subsequent answers.

Ans. to 5th int. I have now had considerable experience in treating and managing sheep suffering with "scab," and could not now discover it in its incipiency without minute and careful examination of each sheep in a flock. The disease commences in minute pimples on the skin, of a purplish color, containing animalculæ.

Ans. to int. 5th continued. These multiply rapidly and spread over

the surface of the sheep. The affected parts seem to itch, which causes the sheep to bite itself, rub against any and everything that will
133 appease the itching. It also induces them to roll on the ground. This all goes on under the wool, and can only be discovered by catching the sheep, parting the wool, and carefully examining the condition of the skin. Diseased ewes are not prolific; do not breed readily, and where they do breed their offspring is feeble, hard to raise, owing to the diseased and debilitated condition of the mother; her milk is scant in quantity and poor in quality. The ewes often refuse to own their young, and abandon them to their fate. The wool of scab'ed sheep is scant in quantity and inferior in quality. It is dry, lifeless, short; it sheds out and is wasted before shearing-time. The scabs from the diseased skin mingle with it, making it foul & dirty.

Ans. to int. 6th. I knew neither party in 1860.

Ans. to int. 7th. I know nothing of the matters contained in this interrogatory.

Ans. to int. 8th. I know nothing about the matter.

Ans. to int. 10th. I did have controll of the sheep "enquired about"; I took charge of them the 20th day of October, 1866. I supposed
134 that the flock was cured of scab, which I supposed that they had had, as I had seen them dipped in a decoction of tobacco and lime before I took charge of them. The terms upon which I took charge of the flock of sheep of the defendant Robertson was that I was to give them all necessary attention, keep them herded, doctored, and attended to in every respect, and for my compensation I was to receive one-third of the wool and one-third of the lambs. I dipped the sheep three times in the course of the year.

Ans. to int. 10th continued. And in addition I examined each one daily, and on the diseased spots I used mercurial ointment, as well as the tobacco-juice and lime, to eradicate the disease. I gave them salt, sulpher, and ashes once a week to lick. Every time I dipped the sheep some died. They were too much diseased and debilitated to bear dipping. There was about six hundred sheep in the flock when I took charge of them. I had that year one hundred and twenty lambs. They all seemed to be diseased from the start. I turned the sheep
135 over to defendant on or about the 20th day of October, 1867, and there was not as many sheep in the flock when I turned them over to defendant as there was when I took charge of them one year previous. I refused to take any part of the flock in compensation for my services, because I looked upon them as worthless.

Ans. to int. 10th continued. And I did not want them in their diseased condition, and did not like to turn over to defendant a less number than I received from him a year before. When I turned them over to defendant he (defendant) employed M. T. Minor to take charge of them, and I was to deliver them to said Minor. To do so I had to drive them two or two and a half miles. In doing so I found a great many were unable to travel that distance. I saw the flock frequently while under the controll of Minor, and saw that they were constantly diminishing in number and declining in condition. I finally bought the remnant of the flock, 108 in number, of defendant, Robertson, for one dollar a head, payable in property. I paid defendant for said remnant of the flock a mule and a few dollars in money. These sheep
136 continued diseased and to diminish in number and condition as long as I knew anything of them.

My means of information about the diseases of sheep is derived from theory and practice. I procured the best books published upon the

diseases of sheep, and studied them, and examined many flocks of sheep in Bell and the adjoining counties, and got the experience and suggestions of their owners and keepers, and brought all such experience to bear upon the flock of defendant, but to no purpose.

I do not consider sheep in the condition that defendant's flock was in of any value whatever. Scab'ed ewes seem to communicate the disease to their young as soon as they come into the world. Lambs from diseased ewes are feeble from the diseased, feeble condition of the mother, and if they were taken away from their mother before they were infected with the disease they would still be feeble and of but little value.

C. S. DOUBLEDAY answers to cross-int. 6th. I do not know defendant Robertson, bought the flock referred to and turned over to
137 me and was managed, and the remnant of which I finally bought. I never gave testimony in this suit before about these sheep. I have stated all I know in regard to the matter contained in the interrogatories and cross-interrogatories.

C. S. DOUBLEDAY.

M. T. MINOR answers to int. 1st. I know E. S. C. Robertson, but do not know Henry Cease.

Ans. to int. 2nd. I know nothing about the matters enquired about in this interrogatory.

Ans. to int. 3rd. I know nothing about the matters enquired about in this interrogatory.

Ans. to int. 4. I know nothing about the matters enquired about in this interrogatory.

Ans. to int. 5th. All I know about the matter enquired about in this interrogatory will be fully stated in my subsequent answer.

Ans. to int. 6th. I was acquainted with neither, in 1860.

Ans. to int. 7th. I know nothing of the matters enquired about in this interrogatory.

Ans. to int. 8th. I know nothing about the matters enquired about in this interrogatory.

Ans. to int. 10th. I did have control of a flock of sheep belonging to defendant Robertson, but do not know that they were the
138 sheep enquired about. I took charge of said flock for defendant about the 1st of October, 1867; I took charge of them after C. S. Doubleday returned them to defendant. I took charge of them, and for my services was to receive one-third of the wool and increase, for my services for two years. They were in bad condition as to health when I took charge of them. I had at that time a flock of sheep of my own, which I had owned five years, when I took charge of defendant's flock. My own flock was in good condition when I took charge of defendant's flock. I received of defendant about 525 heard of sheep. I gave them all the usual and necessary attention in my power. I dip'ed them three times while I had them, gave them salt and sulpher, used cresylic ointment on them freely, all of which seemed to do them no good. The lambs seemed to be diseased when they came into the world, and immediately commenced scratching. I had been sheep-raising five years, and had examined many flocks, and had conversed with the most experienced sheep-raisers in this part of the country, and with
139 my information have been enable' to keep my own flock clear of disease, but I failed to relieve defendant's sheep. I turned over at the end of my contract to defendant 110 head; my own flock was reduced to 72 head, and the remainder was badly diseased. Defendant

told me that he had sold the remnant of his flock to C. S. Doubleday, for one dollar per head.

Ans. to int. 11th. I know nothing of the matters enquired about in this interrogatory.

Ans. to cross-int. 6th. I do not know who defendant Robertson got the sheep referred to from. I have already stated that I took charge of defendant's flock in October, 1867. I never gave testimony in this suit before.

M. T. MINOR.

THE STATE OF TEXAS,
Bell County:

I, H. H. Parker, notary public in and for Bell County, Texas, do hereby certify that the foregoing answers of W. R. Alexander, C. S. Doubleday, D. H. Chamberlain, and M. T. Minor, the witnesses before named, were made before me, and were sworn to and subscribed
140 before me by said witnesses respectively.

Given under my hand and seal of office this the 8th day of January, 1874.

[L. S.] H. H. PARKER,
Notary Public, Bell County, Texas.

Deposition of David Brown is endorsed on envelope: "1472. Henry Cease vs. Sterling C. Robertson. In U. S. circuit court for western dist. of Texas, at Austin. Deposition of the witness David Brown. Rec'd this package from the hands of Tho's H. Conklin, the officer before whom the within deposition was taken, this January 1st, 1874. Sterling C. Robertson. Rec'd from the hands of Sterling C. Robertson, who on oath says that he received these depositions from the hands of the officer who took the same, and that they have remained in his possession intact, and have not been opened, altered, or changed in any respect, but are delivered intact as received. Sworn to and subscribed before me, this 3d Jan'y, 1874. Sterling C. Robertson. M. Hopkins, cl'k. To the clerk of the circuit court of the United States for the western district of Texas, Austin. Filed 3d January, 1874. M. Hopkins cl'k.

(Indorsed cross seal:) T. H. Conklin, notary public, Harris Co., Tex.

The depositions are in words, to wit:

141 In U. S. circuit court, western dis. Texas, at Austin.

HENRY CEASE
vs. } No. 1472.
E. STERLING C. ROBERTSON.

The plaintiff, or his attorneys of record, Mess'rs Coke, Herring and Anderson, and Chandler, Carleton and Robertson, will please take notice that five days after service of copy of this notice, and after the accompanying interrogatories, application will be made to the clerk of the U. S. circuit court for the western district of Texas for a commission to take the answers to the following interrogatories of David Brown, a material witness for the defendant, who resides in the county of Uvalde, State of Texas, to be used on the trial of the above entitled & numbered cause.

F. H. SLEEPER,
Att'y for Def'd't.

1st. interrog. This suit is brought by plaintiff against defendant on a promissory note, or writing-obligatory, executed by defendant, E. Sterling C. Robertson, to W. J. Chamblin, for the sum of four thousand one hundred and ninety dollars, dated Belton, October 2nd, 1860, such note now being held assignment, it is alleged, to plaintiff, and defendant and with D'r W. J. Chamblin; if so, when and where did you know each of them?

142 2nd. Did you know anything of the execution of the *execution of the* note referred to in first interrogatory, or of any business transactions between said Robertson and Chamblin at the time and place referred to; if so, for what consideration was said note given, or what was the nature of the business, if any, that was transacted between them?

3rd int'y. Did you or not know D'r W. J. Chamblin previous to and at the time he came to Texas in the winter of 1859, or the early part of 1860; if so, who came with him, and what property did said Chamblin bring with him, if any?

4th. If you say said Chamblin brought a flock of sheep to Texas, state what time he arrived here with them, how many he brought, where he kept them, and how long at each place.

5th. If you know, state who was the chief herder, and who had the care and management of said flock of sheep while said Chamblin owned or kept them in Texas.

6th. State whether or not you know of said Chamblin trading or selling to said E. Sterling C. Robertson any of said flock of sheep. If yea, how many of said sheep, and at what price, and at what time and place. What was the condition, as to health, of the sheep sold to Robertson at the time they were sold; were they healthy and free from disease, or were they infected to any extent with any disease?

143 8th. State whether or not you know whether said Chamblin knew that they were deceased at the time of such sale; and if you say that Chamblin knew that they were diseased at the time of such sale, your means of knowing it.

9. I' you say you herded and kept said sheep for Chamblin previous to and at the time he sold them to Robertson, state whether or not, you had or not, previously to the date of sale to Robertson, applied remedies for the care of said sheep, and whither or not you were doing so at or about the time of such sale to Robertson.

10. If you answer the preceding interrogatory affirmatively, state whether it was a peculiar or ordinary remedy you used, how it was administered or applied, for what purpose it was used, what particular effect was expected or desired by its use, what caused you to apply the particular remedy used, and if any one instructed you to use any remedy; state who it was and what reasons, if any, were assigned for its use. If you say W. J Chamblin gave you instructions with regard to the use of any remedy for disease in the sheep, state fully all that was said by him upon the subject, describe the mode of application and the effect produced.

11. State whither you heard W. J. Chamblin make any statement or representation to said Robertson about the condition, soundness,
144 and health of said sheep, about the time or previous to this purchase of the same by Robertson; and, if so, state what those representations or declarations were.

12. State whether you or any one in the employ of said Chamblin caring for and keeping said sheep, to your knowledge, informed said Robertson of the condition of said herd as to soundness and health at

the time or before said purchase, and if he was not so informed, what reason or motive induced to remain silent upon the subject.

13. State whether or not you heard said Chamblin make any representations to said Robertson in relation to the blood or quality of said sheep; if so, state what those representations were and where they were made.

14. State, if you know, whether or not a part of said sheep were picked up on the way to Texas by said Chamblin; if so, state how he obtained them, and what quality of sheep they were.

15. What is your business? If you say a shepherd, state how long you have been engaged in the business, and where you learned it, where you were engaged in the business, and state whether or not you are a good judge of sheep, and whither you are a good judge of the diseases of sheep.

F. H. SLEEPER,
Att'y for Def'd't.

145 In circuit court of the United States, at Austin.

HENRY CEASE
vs.
E. S. C. ROBERTSON } No. 1472.

Plaintiff excepts and will object to each and all of the interrogatories propounded by the defendant, Robertson, to the witness, David Brown, for the following reasons, to wit:

First. Because the residence of said Brown is not correctly stated in the answer, because he does not reside in the county of Uvalde in the State of Texas.

Second. To each and any question seperately propounded to said witness, and the answer thereto, if in the affirmative, because the same are leading, irrelevant, and inadmissible in evidence in this cause.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Plaintiff.

If the above objections and exceptions are overruled, then plaintiff propounds the following cross-interrogatories to said witness, Brown:

Cross-int'y 1st. (To the witness, David Brown.) Where have you lived during the years 1870, 1871, 1872, & 1873 up to the present time? Please state the county or counties, and precincts, towns, and cities that you have lived in during said period. Where do you now reside?

146 Please state the town, precinct, and county.

Cross-int'y 2nd. Who is present while you are answering these foregoing direct and cross interrogatories? When did you last see the defendant Robertson? Please give the date as near as you can. Have you any letters from the defendant Robertson? If you have, please attach them or copies of them to your answer to this interrogatory.

Cross-int'y 3rd. Were you present when the note sued on in this case was executed and delivered to Doctor Chamblin?

Cross-int'y 4th. Can you state positively, of your own knowledge, that the defendant Robertson never executed any other note to W. J. Chamblin than the one sued on in this case?

Cross-int'y 5th. Were you personally present when the trade was fully consum'ated between Robertson and Chamblin?

Cross int'y 6th. Were you well acquainted with the defendant Robertson before and at the time he purchased from Doctor Chamblin?

How far did you then live from him? Were you in charge of the sheep at the time of the trade?

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Plaintiff.

147 United States circuit court, western district of Texas, at Austin holding sessions.

I, Matthew Hopkins, clerk of the circuit court of the United States for the western district of Texas, at Austin, hereby certify that the foregoing and annexed pages contain a full and true copy of the original and cross interrogatories filed in this court in case No. 1472, entitled Henry Cease vs. E. S. C. Robertson, directed to David Brown, of Uvalde Co.

In testimony whereof I have hereunto set my hand and the impress of the seal of court, at Austin, this 13th day of December, A. D. 1873.

[L. S.] M. HOPKINS, *Clerk.*

148 UNITED STATES OF AMERICA:

Circuit court of the United States, western district of Texas, holding sessions at Austin.

The President of the United States to any officer authorized by the laws of Texas and the practice of the district courts of the State to take depositions of witnesses, greeting:

Know ye that, reposing trust in your integrity and fidelity, we have, and by these presents do nominate, constitute, appoint, commission, and require you to cause David Brown, of the county of Uvalde, State of Texas, to come before you at such time and place as you may appoint, and that you then and there carefully and fully examine, upon oath or affirmation first taken before you, touching the annexed interrogations and cross-interrogatories.

1. That you reduce their answers so taken to writing, in proper form, and cause the same to be subscribed and sworn to before you by said witnesses.

2. That you certify, under your hand and seal of office, that said answers were sworn to and subscribed before you.

3. That you seal up in an envelope the answers so taken, together with the annexed interrogatories and this commission, with your name written across the seal thereof.

4. That you endorse on said envelope the names of the parties to said suit, as well as the name of said witnesses.

5. Address the package to the "Clerk of the circuit court of the United States for the western district of Texas, at Austin."

6. That if said package be transmitted by the public mail, the postmaster shall endorse thereon that he received it from your hands, and sign his name thereto; which answers, when so taken and returned as aforesaid, are to be read in evidence in a certain suit now pending in said circuit court of the United States, at Austin, wherein Henry Cease is plaintiff, and E. S. C. Robertson is defendant. No. 1472.

Herein fail not, but due return make of this commission, with your proceedings had by virtue thereof, to our said circuit court, at Austin, before the return day of the next term, to be begun and held at Austin, on the first Monday in January next, A. D. 1874.

Witness the Hon. Nathan Clifford, associate justice of the Supreme

Court of the United States, and seal of our said circuit court, at Austin, this 13th day of December, 1873.

L. S.] M. HOPKINS, *Clerk.*

149 U. S. circuit court, western district of Texas, at Austin, law side.

HENRY CEASE *vs.* E. S. C. ROBERTSON. } No. 1472.

Answers and depositions of DAVID BROWN, a citizen & resident of Uvalde County, State of Texas, to the accompanying direct and cross-interrogations propounded to him in the above-entitled and numbered cause, taken by & before Tho's H. Conklin, a notary public within and for the county of Harris, in the State of Texas, by virtue of, and in accordance with, the accompanying commission:

To the 1st interrogatory said witness, David Brown, answers: I am acquainted with all three of the parties named in this interrogatory, except Henry Cease; I became acquainted with D'r Chamblin, in Illinois, in 1859; I became acquainted with E. Sterling C. Robertson, at Salado, in Bell County, Texas, in the year 1859, by reputation, and personally acquainted with him in about September, 1860.

To the 2nd interrogatory said witness answers: The only transaction I know anything about between Chamblin and Robertson, about the time referred to, was the sale by Chamblin to Robertson of between thirteen hundred and fourteen hundred sheep at the rate of five
150 dollars per head. I don't know what the consideration was for which said note was given.

To the 3rd interrogatory said witness answers: I did know D'r Chamblin before he came to Texas. I, with three other men, and the D'r's wife & one or two children, came to Texas with the D'r; he had with him as his property about 1,600 head of sheep, four mares, one stallion, one buggy, & one two-horse wagon, and tent and camping-equippage, when he came to Texas.

To the 4th interrogatory said witness answers: D'r Chamblin arrived in Bell County, Texas, on the 23rd day of November, 1859, with said sheep. He kept said sheep for about a year from that time between three & four miles from Salado on the Austin & Waco road or near the road; and he kept said sheep all the time in this neighborhood until said sale to Robertson.

To the 5th interrogatory said witness answers: I was the chief herder and had the care and management of said sheep for D'r Chamblin, while he owned the same in Texas.

To the 6th interrogatory said witness answers: I do know of a sale of said entire stock of sheep made by D'r Chamblin to said
151 Robertson about the 1st day of October, 1860, at Jacobson's house near Salado, in Bell County, Texas, at the rate of five dollars per head. Said sale was made and the sheep delivered on the terms mentioned in my presence. At the time of the sale there was between 1,300 & 1,400 head of said sheep.

To the 7th interrogatory said witness answers: At the time of said sale said sheep or a part of them were slightly affected with the "scab"; otherwise, they were healthy and in fair condition.

To the 8th interrogatory said witness answers: D'r Chamblein at the time of said sale knew that said stock of sheep were diseased as stated

by me; know this because I had previously informed D'r Chamblin of the fact, & applied to him for remedies to cure said disease.

To the 9th interrogatory said witness : Previous to said sale I had applied remedies to said sheep to cure them of the scab, and was doing so at the time of the sale.

To the 10th interrogatory said witness answers: The remedies I so applied were mercurial ointment & lard; I applied the rem*ied* by parting the wool of the sheep and rubbing the ointment & lard on
152 the said places. The object in doing this was to prevent the scab from spreading, or, in other words, check the disease until the wool could be sheared from them. The only effect expected from this application was the checking of the disease. I applied these remedies, which were furnished me by D'r Chamblin, by his instruction, and as he directed.

To the 11th interrogatory said witness answers: At the time Robertson come to look at the sheep, with the view of buying them, and only a very short time before the sale was made, I heard D'r Chamblin tell M'r Robertson that the sheep were perfectly sound & healthy.

To the 12th interrogatory said witness answers: I don't know whether any one informed Robertson of the true condition of the sheep; I did not, because he did not ask me.

To the 13th interrogatory said witness : When Robertson & Chamblin were negotiating for the sheep—i. e., the sale I have already mentioned—Chamblin represented to Robertson that the sheep so sold were all full-blooded Merino sheep.

To the 14th interrogatory said witness answers: Some of the sheep so sold were picked up on the way from Illinois to Texas by D'r
153 Chamblin. They were about half-blood Merino, and were stray sheep that would get into Chamblin's herd at the different camping places at which he stopped on his way to Texas.

To the 15th interrogatory said witness answers: I am a shepherd; have been engaged as such for about thirty-eight years. I learned the business in Dumfrieshire, Scotland. I have been engaged in business as a shepherd in Scotland and in Texas. I am, or rather consider myself, a good judge of sheep, and of the diseases of sheep.

To the 1st cross-interrogatory said witness answers: I am now, and have been since 1868, *been* living in Uvalde County, in the State of Texas, eight miles from the town of Uvalde, on the Rio Frio River, & two miles above the Eagle Pass road, where it crosses the Rio Frio.

To the 2nd cross-interrogatory said witness answers: The notary, M'r Conklin, & M'r Garrett, who is acting as his amanuensis, and M'r Sterling Robertson, who is a son of the defendant, and myself, are present during the taking of this deposition. The last time I recollect of seeing the defendant, Robertson, was at his house in Bell County, Texas, about the latter part of December, 1860. I have no letters from the
154 defendant, Robertson, and, therefore, cannot attach them, as requested.

To the 3d X-interrogatory said witness answers: I was not present.

To the 4th X-interrogatory said witness answers: I cannot.

To the 5th X-interrogatory said witness answers: I was not.

To the 6th X-interrogatory said witness answers: I was not personally acquainted with the defendant, Robertson, until he came to look at the sheep to buy them. I then lived between three & four miles from said Robertson. I was in charge of the sheep at the time of the trade.

DAVID BROWN.

UNITED STATES OF AMERICA,
The State of Texas, County of Harris:

I, Thomas H. Conklin a notary public within and for the county of Harris, in the State of Texas, duly commissioned, qualified, and acting, do hereby certify that the foregoing answers of David Brown, the witness before named, were made before me, and were sworn to and subscribed before me by the said witness.

And I further certify that the words "eft, Henry Cease," were interlined between 3rd & 4th lines from bottom on 1st page of this deposition, and the words "I became acquainted with Henry Cease"
155 were erased on 5th & 6' lines from top on 2nd page of this deposition, and the words "and personally acquainted" with him in about September, "1860," written above said lines, and the word "of," on the 14th line from top on the 9th page hereof, erased, before the above deposition was signed or sworn to by said witness.

In testimony of all of which witness my hand & official seal at Houston, in Harris County, Texas, this 1st day of January, A. D. 1874.

[L. S.] T. H. CONKLIN,
Notary Public, Harris Co., Texas.

Deposition of D. T. Chamberlin is endorsed on envelope: "No. 1472. Henry Cease vs. E. S. C. Robertson. Suit pending in U. S. circuit court at Austin, Texas. Deposition of D. T. Chamberlin. Rec'd this package from hands of R. W. Davis, notary public, to be forwarded in due course of mail. W. R. Chase, p. m. To the clerk of the circuit court, western dist. of Texas. Rec'd from p. office at Austin and filed June 20, 1874. M. Hopkins, cl'k. Opened at request of counsel for defendant Oct. 15, 1874. M. Hopkins, cl'k.

(Endorsed across seal:) R. W. Davis, notary.

Commission is in words, to wit:

156 The President of the United States to any officer authorized by the laws of Texas, and the practice of the district courts of the State, to take depositions of witnesses, greeting:

Know ye that, reposing trust in your integrity and fidelity, we have, and by these presents do nominate, constitute, appoint, commission, and require you to cause D. T. Chamberlin, of McLennan Co., Texas, to come before you at such time and place as you may appoint, and that you then and there carefully and fully examine, upon oath or affirmation first taken before you, touching the annexed interrogations, cross-int'ys.

1. That you reduce his answers so taken to writing, in proper form, and cause the same to be subscribed and sworn to before you by said witnesses.

2. That you certify under your hand and seal of office that said answers were sworn to and subscribed before you.

3. That you seal up in an envelope the answers so taken, together with the annexed interrogatories and this commission, with your name written across the seal thereof.

4. That you endorse on said envelope the names of the parties to said suit, as well as the names of said witnesses.

157 5. Address the package to the "clerk of the circuit court of the United States for the western district of Texas, at Austin."

6. That if said package be transmitted by the public mail the postmaster shall endorse thereon that he received it from your hands, and

sign his name thereto; which answers, when so taken and returned as aforesaid, are to be read in evidence in a certain suit now pending in said circuit court of the United States at Austin, wherein Henry Cease is plaintiff, and E. S. C. Robertson defendant, No. 1472.

Herein fail not, but due return make of this commission, with your proceedings had by virtue thereof, to our said circuit court, at Austin, before the return day of the next term, to be begun and held at Austin on the first Monday in January next, A. D. 1874.

Witness the Hon. Nathan Clifford, ass't justice of the Supreme Court of the United States, and the seal of our said circuit court, at Austin, this 15th day of December, 1873.

M. HOPKINS, *Clk.*

Interrogatories to be propounded to D. T. Chamberlin, of Mc-
158 Lennan County, Texas, in suit of Henry Cease vs. E. S. C. Robertson, No. 1472, pending in the circuit court of the United States at Austin.

Interrogatories.

Int. 1. Are you acquainted with the parties to the above-entitled suit, and do you know its object? If yea, state it.

Int. 2. If in answer to the above you say it is a suit brought by Henry Cease on a promissory note for $4,190, dated the 2' of October, 1860, at Belton, Texas, executed by the defendant, Robertson, to one W. T. Chamblin, please state, if you happen to know, what was the real or supposed consideration of said note.

Int. 3. If in answer to the last interrogatory you say it was given for a flock of sheep, please state as near as you can when and where the trade was made, and what were its terms; and if you say the sale was partly for cash and partly on time, please state how much was in cash, and state how you know this to be the fact. If you say you counted out the money and saw the cash payment made, what amount was it, and when was it paid?

Int. 4. (To all the witnesses.) Please state any other fact in your knowl-
edge as to the quality, kind, number, or condition of said sheep,
159 which will go to show that the trade between Chamblin and Robertson was fair and honest on both sides or to the contrary; and when so stating any fact give the date and place of the occurrence as near as you can.

F. H. SLEEPER & HANCOCK, WEST & NORTH,
Att'ys for Def't.

Cross-int'ys to all of the witnesses:

Cross-int. 1st. If, in answer to the 2d direct int'y, you have stated that you know what the note described in said int'y was given for, please state how you know what it was given for. Did *did* you ever see the note sued on in this case? How do you know that you have ever seen the identical note for $4,190.00 sued on in this suit? Did you ever have it in your possession; if not, please state who told you what it was given for, and when you were told what the note was given for. Did W. J. Chamblin, the payee of the note, ever tell you what it was given for? Please state how you know what the note sued on in this case was given for, or the consideration for which it was given.

Cross int'y 2d. (To D. T. Chamberlin.) If, in answer to the 4th direct

int'y, you have stated that the defendant Robertson purchased a
160 flock of sheep from W. J. Chamblin, in 1860, please state the day of the month and year as near as you can. And if you have further stated that you saw defendant, Robertson, doctoring the sheep for the scab, please give the date when you first saw him doctoring them. Did Robertson have or own any other sheep before or after he purchased from W. J. Chamblin, except those purchased from Doctor Chamblin?

Cross-int'y 3. How long could sheep ordinarily have the scab before it would be discovered by ordinary observation by any one of ordinary sense that was interested in the sheep; would not an ordinarily good shepherd discover it very soon?

Cross-int'y 4th. (To D. T. Chamberlin.) Is it not true that soon after Robertson purchased the sheep there was sheep in the same range that belonged to other parties that had the scab?

Cross-int'y 7. (To all said witnesses.) If you have made any statements in answer to the 11th and last direct int'y, please state when and from whom you obtained the information of the facts that you state. Give the name of each party and the date as near as you can.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Plaintiff.

161 True copy of int'ys & cross-int'ys, filed in suit 1472, in circuit court, Austin, entitled Henry Cease vs. E. S. C. Robertson, propounded to D. T. Chamberlin, or which he is required to answer.

In test whereof I hereto set my hand & seal of court, at Austin, this 15th Dec'r, 1873.

[L. S.] M. HOPKINS, *Clk.*

Suit pending in the U. S. circuit court, western dist. of Texas, at Austin.

HENRY CEASE *vs.* E. S. C. ROBERTSON. } No. 1472.

Answers & depositions of witness D. T. Chamberlin, a resident citizen of McLennan County, Texas, to the accompanying interrogatories propounded to him in the above-entitled cause, taken in accordance with the accompanying commission before R. W. Davis, a notary public of McLennan County, Texas, duly commissioned & qualified.

Answers of witness D. T. Chamberlin.

To interrogatory 1st he answers as follows: I am acquainted with the defendant only. Am not certain as to the object of the suit, but have heard that it was brought against the defendant, Robertson, for or on his note given for part payment for a flock of sheep, bought by
162 him of W. J. Chamberlin.

Answer to 2nd interrogatory. Partly in consideration of a flock of sheep purchased by E. S. C. Robertson from W. J. Chamblin in the fall of the year 1860.

Answer to 3rd interrogatory. The trade was made in the fall of the year 1860, and was consum'ated at my office, then in the town of Belton, T'x's. The terms were, about twenty-five hundred dollars down and a note for something over four thousand dollars. I wrote the agreement between the parties, and saw the money paid at my office, in the town of Belton, and the cash payment was about 2,500$.

H.
And

Answer to 4th interrogatory. The sheep, if fair, would have been of good quality, but they were afflic ed with a disease called the scab, and many of them were older than represented. The transaction, as stated before, occurred in my office, in the town of Belton, Texas.

D. T. CHAMBERLIN.

Sworn to and subscribed before me.

R. W. DAVIS, *Notary.*

Answer to cross-interrogatory first. I have seen a note which
163 answers to the description of the note referred to; the said note was drawn in my office, and, I think, by me. The trade was consum'ated in my office. I heard all that passed between or was said by the parties to the trade at the time above mentioned. The note was in my possession for several years afterwards. I haven't said positively that the note sued on is this identical note, but I know that a note for about the said amount was given at the time stated by said Robertson to said Chamblin, & that the consideration was a large number of sheep.

Answer to cross-interrogatory 2nd. In September, in the year 1860 —don't remember the day of the month. Don't remember that I ever saw Robertson doctoring the said sheep. I saw the sheep fr quently after the trade referred to, and know that they had the scab. I am not quite certain, but think Robertson had other sheep before he made this purchase.

Answer to cross-interrogatory 4th. There may have been, but I do not recollect. I had sheep of my own, but they were kept three or four miles from the sheep of Robertson.

Answer to cross-interrogatory 5th. I respectfully refer to my answer to last direct interrogatory for answer to this. A long time has
164 elapsed since the occurrence referred to, and I have forgotten many of the details.

D. T. CHAMBERLIN.

STATE OF TEXAS,
McLennan County:

I, R. W. Davis, a notary public of McLennan County, Texas, duly commissioned & qualified, do hereby certify that the foregoing & hereto attached answers of D. T. Chamberlin, the witness before named, were this day made before me, and were sworn to and subscribed before me by said witness, D. T. Chamberlin.

In witness whereof I hereto set my hand and official at office in Waco, this May 27th, A. D. 1874.

[L. S.] R. W. DAVIS,
Notary Public McLennan County, Texas.

Notary fee, $3.00, p'd by def't.

Instructions asked by plaintiff are indorsed: "Filed March 5, 1875. M. Hopkins," and are in words to wit:

165 Instructions asked by plaintiff, endorsed to wit: "1472. Cease vs. Robertson. Instructions asked by plaintiff. Filed March 5, 1875. M. Hopkins, cl'k." In words as follows:

In U. S. circuit court, west dist. Texas.

CEASE *vs.* ROBERTSON. } No. 1472.

The plaintiff asks the court to charge the jury as follows:

If the jury believe, from the evidence before you, that the administrators of W. J. Chamblin endorsed and transferred the note sued on to Henry Cease, the plaintiff, in good faith, bon' fide, and for a valuable consideration, then the plaintiff is a holder of said note in good faith, and was entitled to sue in this court to recover the amount due upon the same, and, in order to constitute the plaintiff a holder in good faith and for a valuable consideration, it is not necessary to show that he paid full value—that is, full face-value, for said note. If he acquired the same in good faith, and for valuable consideration, although he may not have paid the full face-value, he is a bona-fide holder, and should be so regarded by you in making up your verdict.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Plaintiff.

Given—

T. H. DUVAL,
U. S. Judge.

166 Instructions asked by plaintiff, endorsed to wit': "Filed March 5, 1875. M. Hopkins, cl'k." Which are as follows:

In the U. S. circuit court, west dist. Texas.

CEASE *vs.* ROBERTSON. } 1472.

The plaintiff asks the court to charge the jury as follows:

The defendant pleads, as an offset to the plaintiff's right of recovery in this suit, that the note sued on was given in part payment for a flock of sheep sold to defendant by W. J. Chamblin, the payee of the note, and that the said sheep were at the time diseased with scab, and that said disease was fraudulently concealed from defendant. The defendant has confined his defense to the fraud in concealing this disease, and you have nothing to do with any question as to the age of the sheep or the quality of the sheep, because the defendant has not pleaded any defense of this character. The only defense as to the quality of the sheep is that they were diseased with scab, and that Chamblin fraudulently concealed the fact from defendant when the sale was made. You will therefore confine your investigation of this branch of the defense to the question of fraud on the part of Chamblin in concealing the disease from defendant.

CHANDLER, CARLETON & ROBERTSON,
Att'ys for Pl'ffs.

Given—

E. &

T. H. DUVAL,
U. S. Judge.

Hp

And

REC. 301—5

the January term

167 *Charge of the court.*

HENRY CEASE
vs.
E. STERLING C. ROBERTSON. } Charge of the court.

This is a suit brought by the plaintiff against the defendant on a promissory note made by the defendant for $4,190.00 on the 2d day of October, 1860, in favor of D'r W. J. Chamblin or order, and due and payable on the 1st day of July, 1861.

This note was transferred to the plaintiff on the 10th day of Sept'r, 1873, by the administrators of Chamblin, who had previously died intestate. As this transfer was made after the maturity of the note, the plaintiff took the same subject to any valid objection to its payment which the defendant could make if Chamblin himself had sued upon it.

The making of this note, and its transfer by the administrators of Chamblin, establishes in the plaintiff a prima facie right to recover the amount of principal and interest due thereon, unless the defendant, by one or more of the defenses he has set up against the same, satisfies the jury, under the evidence and the instructions of the court, that such recovery ought not to be had.

In the first place, the defendant has, by a sworn plea in abatement, alleged that the plaintiff, Cease, is not the true owner of the note sued on; that it was assigned to the plaintiff by the administrators
168 of W. J. Chamblin, dec'd, because, as such administrators, by appointment of a court in Illinois, they could not maintain suit on the note in this court, without first taking out letters of administration in the State of Texas; and that, for the purpose of giving this court jurisdiction and enabling a suit to be brought therein, the said administrators made a colorable assignment of said note to the plaintiff without consideration, and merely for the purpose of obtaining, fraudulently, a jurisdiction in this court.

If, from all the evidence in this case, having any bearing upon this point, the jury believe that such assignment of the note was colorable, and made only to confer jurisdiction on this court, while the beneficial results were, in fact, to accrue to the estate of Chamblin, then they will find for the defendant, and they need not consider the other defence set up by him. But if the jury are not satisfied from the evidence to find for the defendant on this plea in abatement, then they will proceed to the consideration of the other ground of defence.

This other ground is based upon fraud and misrepresentation alleged by the defendant to have been practiced upon him by Chamblin in the sale of a herd of sheep. He admits the execution of the note, but says the same was given in part payment of a flock of sheep, which
169 Chamblin, the payee of the note, sold to him; that at the time of sale, and while the negotiation for the same was going on, the plaintiff represents the sheep to be sound and healthy, and free from disease of any kind; that defendant relied upon said representations, and bought the sheep believing them to be sound and healthy; that said sheep were not, at the time of the purchase, in sound and healthy condition, but were unsound and diseased—affected with a disease called the "scab," which greatly deteriorated from their value; and he alleges that, by such fraudulent sale, he has been damaged in the sum of ten thousand dollars, and prays for judgment for such amount against the plaintiff.

I instruct the jury that this defence, so set up, is a good and valid defence to the plaintiff's action, provided it is sustained by the evidence in the case, and that the burden of proof, in establishing this defence, devolves upon the defendant.

Fraud vitiates every contract into which it enters. It may consist either in misrepresentation or concealment. When, in any contract of sale, a fraud has been practiced upon the buyer by the seller, the law gives to the defrauded party two remedies for relief:

170 1st. He has the right to have the entire contract rescinded, and both parties put back in the same position they were in before the contract was entered into. If he has paid the purchase-money, he is entitled to recover it back, together with all damages which he may have otherwise suffered, growing directly out of the contract and the fraud connected therewith.

In order to avail himself of this remedy, he must return, or offer to return, the property bought, within a reasonable time after he has discovered the fraud, or after he might have discovered it by the use of due diligence.

If the buyer, after the discovery of the fraud, or after he might have discovered it by due diligence, treats the property as his own, and fails to make a prompt offer to rescind the contract and return the property, when it is in his power to do so, he thereby forever forfeits his right to rescind the contract and recover back the purchase-money.

2nd. Although a party defrauded may have lost his right to rescind the contract for the reasons I have stated above, yet he is not without remedy. He may bring an action against the party defrauding, and recover damages for the fraud. Or, if the buyer has not paid the purchase-money, he may affirm the contract, keep the property, and refuse

171 to pay the note, and when sued may recoup in damages, and on the trial may prove the damages he has sustained, as a set-off against the note.

In such case the buyer is only required to take reasonable and prudent care of the property. If the property consists of animals sold, which were diseased and unsound, and the disease was infectious and liable to spread, and does spread, without the fault of the buyer, so as afterwards to infect the whole flock, although only a part of them may be diseased at the time of the sale, then liability of the seller would extend to such as might become diseased afterwards from the contagious and infectious character of the disease. And he would also be liable for all damages which flow from the fraud, and which the buyer may suffer before the trial of the case.

If a man fraudulently, and with misrepresentation, sells diseased sheep to another, who has no experience in sheep raising, and who is unacquainted with the peculiarities of the disease, and the proper means of treating it, the buyer is only bound to use such remedies as may be known to him, or which, with reasonable care and diligence, he might have known were generally used for the disease; and if he does this he is entitled to full compensation for all damages flowing from and occasioned by the fraud.

172 If he should succeed in curing the disease, he would still be entitled to recover damages for his trouble and expenses in medicating and curing them.

If a part of the flock were lost, he would be entitled to recover the value. If the whole flock perished under the disease, after the buyer had used due care and diligence in efforts to cure and preserve them, the seller cannot recover anything from the buyer.

And

Therefore, the jury are instructed in this case, that if they believe from the evidence, that W. J. Chamblin, the payee of the note sued on, sold to the defendant, Robertson, a flock of sheep, and the note was a part of the purchase-money, and if they further believe from the evidence, that at the time of the sale, and while the negotiations for the same were pending, Chamblin represented to Robertson that the sheep were sound and free from disease, and if they believe, that relying upon such representations, Robertson bought the sheep; that the representations so made were false and known by Chamblin to be false, and that the sheep were then affected with the disease called "scab," which materially affected their value, then the defendant is entitled to such damages as the proof may show he has sustained by reason of the
173 fraud. And the right of the defendant to such damages would not be affected by reason of his having afterwards, and after he discovered the fraud, or might have done so by due diligence, written to the seller about the sheep without expressing dissatisfaction with the trade. This alone would not defeat his right.

If the jury should believe from the evidence that there was fraud and misrepresentation in this case, as alleged by the defendant, and that the defendant has been injured thereby, you will then find, from the proof before you, the real value of the sheep, as they were affected by the disease, and deduct this amount from the price which defendant agreed to pay for the sheep. This difference, together with interest at the rate of 8 per cent. from the day of sale to this time, is the amount of damages the defendant is entitled to set-off against the note sued on, and the interest thereon. If the damages so assessed are found to be less than the amount of the note and interest, you will bring in a verdict for the plaintiff for the difference. If one be equal to the other, or if the damages are found to be greater than the note and interest thereon,
174 you will simply find for the defendant.

If the jury believe from the evidence that the sheep were diseased at the time of purchase, they will consider the character of the disease, as shown by the proof, its liability to spread among the flock, and to become more fatal as time passed, and more difficult to control. They will also consider the cost, trouble, and attention necessary to be given to sheep diseased in the manner which may be proven. And if they believe from the evidence that the sheep at the time of sale were affected with a disease called the "scab," and that this disease was one not easily detected by a person inexperienced in sheep-raising, and that its existence was known to Chamblin, and was not known to the defendant, and that the defendant was inexperienced in sheep raising, and Chamblin either falsely stated to defendant that the sheep were sound, or withheld from him the fact that they were diseased, whereby the defendant may have been induced to be less careful in his attention to the sheep than he otherwise would have been—these circumstances may all be considered by the jury for the purpose of determining the damages,
175 if any, and the real value of the sheep at the time of their purchase by the defendant.

If the jury believe from the evidence that there was fraud, as alleged by defendant, and through that fraud defendant has suffered the entire loss of the sheep purchased, then they will find for the defendant.

If the jury believe from the evidence that there was no fraud and misrepresentation as alleged by the defendant, then they will find a verdict for the plaintiff for the amount of the note and interest.

The jury are further instructed that a sound price implies a sound article, and if the price demanded is the full value of the article sold, th

purchaser has a right to infer that the seller designs and intends to represent that the article sold is sound and without defect, unless such unsoundness or defect is apparent and can be readily detected by ordinary care and observation.

As regards the statute of limitations, I have to say to the jury that it alone interposes no bar to the plaintiff's recovery in this action.

T. H. DUVAL,
U. S. Judge.

Trial entries.

176 The following entries appear upon the minutes of the court:

MONDAY, *March 1st*, 1875.

HENRY CEASE
vs.
E. STERLING C. ROBERTSON. } 1472.

On this day came the parties by their respective attorneys. Pl'ff's by F. W. Chandler, and the defendant by F. W. Sleeper and C. S. West; and thereupon came a jury of twelve good and lawful men, to wit, John Richardson and eleven others, who were duly tried, empannelled, and sworn. And the demur'er of the def't's having been overruled by the court, the plaintiff tend'ing in evidence the note sued upon, the def'ts objected to its admission and thereupon came on to be heard the question of jurisdiction; and the same was agreed and held for consideration by the court.

WEDNESDAY MORNING, *March 3d*, 1875.

HENRY CEASE
vs.
E. STERLING C. ROBERTSON. } 1472.

On this day came the parties by their attorneys. And the court having overruled the objections of the defendants held for consideration on yesterday, the trial proceeded until the hour of adjournment; and the court, having cautioned the jury, adjourned to meet on to-morrow morning at ten o'clock.

177 THURSDAY MORNING, *March 4th*, 1875.

HENRY CEASE
vs.
E. STERLING C. ROBERTSON. } 1472.

And now came the parties by their attorneys, and the jury empannelled in the cause, and the argument proceed' until the hour of adjournment; and the jury having been cautioned by the court, court was ordered adjourned, to meet on to-morrow morning at ten o'clock.

18 FRIDAY MORNING, *March 5th*, 1875.

HENRY CEASE
vs.
E. S. E. STERLING C. ROBERTSON. }

HE This cause, adjourned until this morning on yesterday, came, the
And
J

court and its officers, the parties by their attorneys, and the jury empannelled in the cause, and the jury having heard the evidence, the argument of counsel, and *received* the charge of the court, retired under the charge of an officer of the court to consider of their verdict, and by agreement of att'ys were permitted to return a sealed verdict in the morning, and court was adjourned, to meet to-morrow morning at ten o'clock.

Judgment.

SATURDAY MORNING, *March* 6, 1875.

HENRY CEASE
vs. } 1472.
E. STERLING C. ROBERTSON.

And now came the parties, by their atty's, the plaintiffs by
178 Chandler and Robertson and the defendant by F. W. Sleeper & C. S. West, and the jury, having been severally called, returned to the court a verdict under seal, and the same having been read, in words, to wit:

We, the jury, find for the plaintiff 5,200.00 dollars.
JOHN RICHARDSON,
Foreman.

It is therefore ordered, adjudged, and decreed by the court that the plaintiff, Henry Cease, do have and recover of and from the defendant, E. Sterling C. Robertson, the full sum of five thousand two hundred dollars, his pl'ff's damages, so found by the jury, together with interest from date at the rate of ten per cent. per annum until paid, and all costs in this behalf by him expended, to be taxed, and for all of which execution may issue; the officers of court to have their process for costs incurred by either party.

And on the same day, March 6th, 1875, the defendant filed his motion in arrest of judgment, endorsed, "Filed March 6, 1875. M. Hopkins, clerk," in words to wit:

Motion in arrest of judgment.

H. CEASE
vs. } 1472.
E. S. C. ROBERTSON.

And now comes the defendant and moves the court in arrest of judgment, because there is no cause of action stated in plaintiff's
179 petition of which this court can take cognizance, and because it appears from the face of the pleadings that this court has no jurisdiction of the cause. And defendant moves that the verdict be set aside, & all the proceedings thereunder be arrested, set aside, & held for naught.

HANCOCK, WEST & NORTH,
F. H. SLEEPER,
For motion.

MONDAY MORNING, *March* 8, 1875.

The following entry appears upon the minutes of the court, to wit:

Order overruling.

HENRY CEASE
vs. } 1472.
E. STERLING C. ROBERTSON.

Now came on to be heard the motion of the defendant for new trial in this cause, and the same, having been considered by the court, was ordered to be, and is hereby, overruled.

And afterwards, to wit, on same day, March 6th, the defendant filed his motion for new trial, endorsed, "Filed March 6th, 1875. M. Hopkins, clerk," and is in words to wit:

Motion for new trial.

HENRY CEASE
vs. } 1472.
E. S. C. ROBERTSON.

And now comes the defendant and moves the court for a new trial, because—

1st. The court erred in refusing the instructions asked by defendant.

2. The court erred in granting the instructions asked by the plaintiff.

180 3. The instructions given by the court at request of plaintiff were calculated to mislead & confuse the jury, & did mislead and confuse the jury.

4. The verdict of the jury is contrary to the law and the evidence.

HANCOCK, WEST AND NORTH,
F. H. SLEEPER,
For motion.

And afterwards, to wit, on March 8th, 1875, the following entry appears upon the minutes of the court:

Order overruling.

HENRY CEASE
vs. } 1472.
E. STERLING C. ROBERTSON.

And thereupon came on to be heard defendant's motion for arrest of judgment, and the same having been considered by the court, was ordered to be, and is hereby, overruled.

181 *Def't's bill of exceptions.*

Bill of exceptions No. 1, endorsed, "Filed March 5th, 1875. M. Hopkins, clerk," in words to wit:

In the honorable United States circuit court, western district of Texas, Austin.

HENRY CEASE
vs. } 1472.
E. STERLING C. ROBERTSON.

Be it remembered that on the trial of this cause the plaintiff offered to read in evidence to the jury the note sued on, to the reading of which the defendant objected, on the ground that the petition did not set forth any cause of action of which the court could take cognizance, in this, that the petition fails to show that the administrators of W. J. Chamblin, dec'd (T. C. Chamblin & J. M. Winn), who assigned the note to the plaintiff, Henry Cease, had authority to make such an assignment as would authorize the said Cease to sue in this court.

The petition shows that said administrators required their fiduciary character from the laws of the State of Illinois and not from the State of Texas; that they had no power themselves to institute suit on the note in this court, and that by assigning the note to the plaintiff, he as their assignee cannot invoke the jurisdiction of this court.

182 The court overruled the objections so made by the defendant, and permitted the note to be read to the jury; to which ruling of the court the defendant, by his counsel, excepted and still excepts, and prays that this his bill of exceptions may be signed and sealed, which is accordingly done.

[SEAL.] T. H. DUVAL.

And afterwards bill of exceptions No. 2 was filed, endorsed, "Filed March 5th, 1875. M. Hopkins, clerk," to wit:

In U. S. circuit court, west. dist. Texas, Austin.

HENRY CEASE
vs. } 1472.
E. S. C. ROBERTSON.

Be it remembered that on the trial of this cause, the plaintiff having read in evidence to the jury the note sued on, the defendant by his counsel requested the court to instruct the jury as follows, to wit (endorsed: "Instructions No. 2, asked by defendant. Filed March 5, 1875. M. Hopkins, clerk"):

The defendant asks the court to instruct the jury that the note sued on became due and payable on the first day of July, 1861. At that time the war, known as the rebellion, was going on, and the statute of limitations of the State of Texas was suspended, and the statute of limitations remained suspended until the close of the war.

183 On the 13th day of June, 1865, the President of the United States, by a proclamation then made, declared the war was at an end, and from that date the statutes of limitations began to run. It then became necessary for the holder of the note to sue on the same

within the time prescribed by the laws of the State of Texas, or be barred of his right so to do.

Four years had elapsed on the 14th day of June, 1869, and at that time the note was barred by the statute of limitations, and in law the debt was then extinguished. The holder had no valid claim against the defendant. It was not in the power of the convention which met in the State of Texas in 1869 to revive the note or cause of action, or to take away the bar of the statute of limitations if the bar had become complete before the ordinance passed by the convention became law.

The said convention did pass an ordinance providing that the statute of limitations should be deemed & held to be suspended in the State of Texas from a certain day in January, 1861, till the adoption of the constitution which said convention made.

Said constitution was adopted and became the paramount law of Texas on the 30th day of March, 1870. Before that date the
184 note sued on was barred by the statute of limitations, and the plaintiff cannot recover in this suit.

HANCOCK, WEST, & NORTH.
T. H. SLEEPER, *For Def't.*

Refused:

T. H. DUVAL,
U. S. Judge.

The court refused the instruction so asked, and thereupon the defendant, by his council, excepted, and still excepts, and tenders this bill of exceptions, and prays that the same may be signed and sealed, which is accordingly done.

[SEAL.]

T. H. DUVAL,
U. S. Judge.

And afterwards, bill of exceptions No. 3 was filed, endorsed: "Filed March 5th, 1875. M. Hopkins, cl'k," in words, to wit:

In U. S. circuit court, west. dist. Texas, Austin.

HENRY CEASE
vs. } 1472.
E. S. C. ROBERTSON.

Be it remembered, that on the trial of this cause the court gave a general charge to the jury, in which are these words: "As regards the statute of limitations, I have to charge the jury that it alone interposes no bar to the plaintiff's recovery in this action."

To which portion of the charge given to the jury the defendant, by his counsel, excepted, and still excepts, and prays that this his bill of exceptions may be allowed, signed, and sealed, which is accordingly done.

T. H. DUVAL,
U. S. Judge.

185 *Application for writ of error and allowance.*

In the Supreme Court of the United States.

E. S. C ROBERTSON, PL'FF IN ERROR,
vs.
HENRY CEASE, DEF'T IN ERROR.

And now comes E. S. C. Robertson and says that at the January term

of the circuit court of the United States for the western district of Texas, held at Austin, and on the 6th day of March, A. D. 1875, a final judgment was rendered against him, and in favor of Henry Cease, in an action pending between them in said court; that in the record, proceedings, and judgment in said action manifest error hath intervened to the damage of said E. S. C. Robertson, the defendant in said action; all of which he is ready to verify; wherefore he prays that a writ of error may issue, returnable to the Supreme Court of the United States at Washington City at the next term thereof, together with citation and a writ of supersedeas, as required by law, so that the errors in said record, proceedings, and judgment may be examined by said Supreme Court and said judgment reversed, and what is right be done in the premises, &c.

F. H. SLEEPER.

186 HANCOCK, WEST AND NORTH,
Att'ys for Pl'ffs in Error.

The writ of error will issue as prayed for.
8th day of March, 1875.

T. H. DUVAL,
U. S. District Judge.

E. S. C. ROBERTSON
vs.
HENRY CEASE. } 1472.

Notice of writ of error being lodged.

The clerk will notify the counsel of Henry Cease that a writ of error has this day been lodged for him.
day of March, 1875.

SLEEPER &
HANCOCK, WEST & NORTH,
Att'ys for Robertson.

Filed March 8th, 1875.

M. HOPKINS, *Clk.*

187 *Supersead'as bond for writ of error.—Filed March* 8, 1875.—*M. Hopkins, C.*

Supreme Court of the United States.

E. S. C. ROBERTSON, PL'FF IN ERROR,
vs.
HENRY CEASE, DEF'T IN ERROR. } No. 1472.

Know all men by these presents that we, E. S. C. Robertson, as principal, and , as sureties, are held and firmly bound unto the said Henry Cease in the sum of ten thousand dollars, to be paid to the said Henry Cease, his executor or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors, or administrators, firmly by these presents, sealed with our seals and dated this day of March, 1875.

Whereas the above-named E. C. S. Robertson hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the circuit *circuit* court of the United States for the western district of Texas, at Austin, at the January term, 1875, thereof, to wit, on the 6th day of March, 1875, against the said E. S. C. Robertson and in favor of the said Henry Cease, for the sum of five thousand two hundred dollars, and all costs in that behalf expended:

188 Now, therefore, the condition of this obligation is such, that if the above-named E. S. C. Robertson shall prosecute his said writ of error to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

E. STERLING C. ROBERTSON. [SEAL.]
T. H. DAVENPORT. [SEAL.]
JOHN T. MILLER. [SEAL.]

Sealed and delivered in the presence of—
Witness:
AMZI BRADSHAW.
A. F. O'NEAL.

The above approved this 8th day of March, 1875.

T. H. DUVALL,
U. S. Judge.

Filed March 8th, 1875.

M. HOPKINS, *Clerk.*

Writ of error is endorsed: "Filed March 8th, 1875. M. Hopkins, clerk," and is in words to wit:

189 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the fifth circuit and western district of Texas, at Austin, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Henry Cease, as plaintiff, and E. S. C. Robertson, as defendant, a manifest error hath happened, to the great injury and damage of the said E. S. C. Robertson, as by his complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington City on the second Monday in October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done

190 therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said

Supreme Court, and the seal of said circuit court, this the 12th day of October, A. D. 1874.

M. HOPKINS,
Clerk U. S. Cir. C't, West. Dist. Texas, at Austin.

This writ of error allowed this 8th day of March, 1875.

T. H. DUVAL,
U. S. District Judge.

And afterwards citation in error was issued, endorsed and is in words to wit:

Citation in error.

UNITED STATES OF AMERICA, *ss:*

To Henry Cease, or his attorneys of record, Chandler, Carleton and Robertson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the 5th circuit and western district of Texas, at Austin, wherein E. S. C. Robertson is plaintiff and you, the said Henry Cease, are defendant in error,
191 to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the party in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 8th day of March, A. D. 1875.

[L. S.]

T. H. DUVAL,
U. S. Judge.

Test, with seal of court, March 8th, 1875.

M. HOPKINS, *Clerk.*

Return.

On this the eighth day of March, A. D. 1875, personally appeared C. S. West, before me, the subscriber, M. Hopkins, clerk of the United States circuit court in and for the western district of Texas, at Austin, and makes oath that he delivered in person a true copy of the within citation to M'rs Frederick Carleton, one of the attorneys of record of the said defendant in error, Henry Cease, on this the 8th day of March, A. D. 1875.

C. S. WEST.

Sworn to and subscribed before me this the 8th March, 1875.

M. HOPKINS,
Clerk of U. S. Circuit Court, Austin, Texas.

192 I, Matthew Hopkins, clerk of the circuit court of the United States in and for the western district of Texas, at Austin, do hereby certify that the foregoing full and fractional written pages, numbered from one to one hundred and ninety-one, contain a full and true transcript of the record of all the proceedings had in this court in case No. 1472, entitled Henry Cease, plaintiff, vs. E. Sterling C. Robertson, defendant, as they appear of file and record in this court.

In testimony whereof I have hereunto set my hand and the impress of the seal of said court, at Austin, this 6th day of October, A. D. 1875.

[SEAL.] M. HOPKINS, *Clk.*

(Indorsement on cover:) No. 301. E. S. C. Robertson, plaintiff in error, vs. Henry Cease. W. Texas C. C. U. S. Filed 2nd November, 1875.

REC. 310—7